

No. 10792

IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

HARRY ASHTON, as Trustee in Bankruptcy of the
Estate of Charles Ralph Sentney,

Appellant,

vs.

CHARLES RALPH SENTNEY,

Appellee.

TRANSCRIPT OF RECORD

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

FILED

JUL 25 1944

PAUL P. O'BRIEN,¹
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in *italics* the two words between which the omission seems to occur.]

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*Page numbering appearing at foot of page of original certified Transcript of Record.

DEBTOR'S PETITION

Form No. 1

In the District Court of the United States for the
Southern District of California, Central Division.

In Bankruptcy

No. 41495-H

In the Matter of

CHARLES RALPH SENTNEY,

Bankrupt.

To the Honorable.....Judge of the
District Court of the United States for the Southern
District of California:

The petition of Charles Ralph Sentney, residing at No. 8861 St. Ives Drive *Street*, in the City of Los Angeles, County of Los Angeles, State of California, by occupation a Realtor, and employed by C. Ralph Sentney, Inc. (or engaged in the business of.....), respectfully represents:

1. Your petitioner has had his principal place of business (*or has resided, or has had his domicile*) at 9119 Sunset Boulevard, Los Angeles, California, within the above judicial district, for a longer portion of the six months immediately preceeding the filing of this petition than in any other judicial district.

2. Your petitioner owes debts and is willing to surrender all his property for the benefit of his creditors, except such as is exempt by law, and desires to obtain the benefit of the Act of Congress relating to bankruptcy.

3. The schedule hereto annexed, marked Schedule A, and verified by your petitioner's oath, contains a full and true statement of all his debts, and, so far as it is possible to ascertain, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said Act.

4. The schedule hereto annexed, marked Schedule B, and verified by your petitioner's oath, contains an accurate inventory of all his property, real and personal, and such further statements concerning said property as are required by the provisions of said Act.

Wherefore your petitioner prays that he may be adjudged by the court to be a bankrupt within the purview of said Act.

Martin Goldman

Charles Ralph Sentney

Attorney for Petitioner

Petitioner

State of California, County of Los Angeles—ss.

I, Charles Ralph Sentney, the petitioner named in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information, and belief.

Charles Ralph Sentney Petitioner

Subscribed and sworn to before me this 15 day of October, 1942.

Martin Goldman (Seal)

Notary Public

(Official character.)

My commission expires Sept. 25, 1945.

[Endorsed]: Filed Oct. 16, 1942. [2]

United States District Court
Southern District of California

ORDERS OF ADJUDICATION AND OF GENERAL
REFERENCE

At Los Angeles, in said District, on October 16, 1942.

The respective petitions of each of the petitioners in the proceedings hereinafter mentioned, filed on the respective dates hereinafter indicated, that he be adjudged a bankrupt under the Act of Congress relating to bankruptcy, having been heard and duly considered; and there being no opposition thereto;

It is adjudged that each of said petitioners is a bankrupt under the Act of Congress relating to bankruptcy; and

It is thereupon ordered that the said proceedings be, and they hereby are, referred to the referees in bankruptcy of this Court, whose names appear opposite the respective proceedings hereinafter mentioned, to take such further proceedings therein as are required and permitted by said Act, and that each of the said bankrupts shall henceforth attend before said referee and submit to such orders as may be made by him or by a Judge of this Court relating to said bankruptcy.

Number 41,495-H

Title of Proceedings Charles Ralph Sentney

Filed 10-16-42

Referee Hubert F. Laugharn, Esq., Los Angeles, Calif.

C. E. BEAUMONT

United States District Judge

[Endorsed]: Filed Oct. 16, 1942. [3]

In the District Court of the United States
Southern District of California

Central Division

In Bankruptcy No. 41,495-H

In the Matter of

CHARLES RALPH SENTNEY,

Bankrupt.

PETITION FOR ORDER REVOKING DISCHARGE.

The petition of Harry Ashton respectfully shows:

1. That he is the duly appointed, qualified and acting Trustee of the estate of the above named bankrupt.

2. That an order of discharge in this matter was made on the 9th day of December, 1942.

3. That petitioner is informed and believes and therefore alleges that said discharge was obtained by said bankrupt by his fraud, in that the bankrupt at the time of the filing of the petition in bankruptcy in this matter was the beneficiary under a certain trust with the First National Bank of Santa Ana, California, created by W. A. Huff and Edith Huff, known as Trust No. 245, of which the bankrupt had knowledge and which was property of value, the title to which passed by operation of law to petitioner; that said bankrupt concealed the existence of said trust from the Trustee and the creditors herein; that petitioner first learned of the existence of said trust on or about the first day of September, 1943, and petitioner has not been guilty of undue laches.

4. That the actual facts in this matter did not warrant the granting of a discharge to the bankrupt, for the reason that as petitioner [4] is informed and believes and therefore alleges, the bankrupt concealed his interest in said trust as above set forth and committed offenses punishable by imprisonment, in that he was guilty of concealment of assets and the making of a false oath by stating in Schedule B-4 filed herein that he had no property in reversion, remainder or expectancy, including property held in trust for him or subject to any power or right to dispose of or to charge.

Wherefore, petitioner prays that the bankrupt be ordered to show cause why an order should not be made revoking his discharge, and upon the hearing of the said order that said discharge be revoked.

Harry Ashton,
Petitioner

EARL E. MOSS AND LOUIS LOMBARDI
Attorneys for Trustee,
By Earl E. Moss

[Verified.]

[Endorsed]: Filed Oct. 7-1943 at Min. past 4 o'clock PM. Hubert F. Laugharn, Referee, M. E. Marsh, Clerk. W.

[Endorsed]: Filed Feb. 4, 1944. [5]

[Title of District Court and Cause.]

PETITION FOR ORDER TO SHOW CAUSE.

The petition of Harry Ashton respectfully shows:

1. That he is the duly appointed, qualified and acting Trustee of the estate of the above named bankrupt.

2. That petitioner is informed and believes that at the time of the filing of the petition herein, to wit, on the 16th day of October, 1942, the bankrupt was the beneficiary under a certain Declaration of Trust made by W. A. Huff and Edith Huff with the First National Bank of Santa Ana, California, known as Trust No. 245, the title to the bankrupt's interest in which, the bankrupt could have conveyed for delivery upon termination of the trust, and which title passed by operation of law to your petitioner.

Wherefore, petitioner prays that the said bankrupt and the said First National Bank of Santa Ana, California be required to show cause why the petitioner is not the owner of the bankrupt's beneficial interest in said trust; and that upon the hearing of said order it be adjudged that petitioner is the owner of said interest.

Harry Ashton
Petitioner

EARL E. MOSS AND LOUIS LOMBARDI

Attorneys for Trustee,

By Earl E. Moss [6]

[Verified.]

[Endorsed]: Filed Oct. 7 - 1943 at Min. past 4 o'clock PM. Hubert F. Laugharn, Referee, M. E. Marsh, Clerk. W.

[Endorsed]: Filed Feb. 4 - 1944. [7]

[Title of District Court and Cause.]

ANSWER OF BANKRUPT, CHARLES RALPH
SENTNEY, TO TRUSTEE'S PETITION FOR
AN ORDER REVOKING THE DISCHARGE
AND BANKRUPT'S RETURN TO THE OR-
DER TO SHOW CAUSE ISSUED OCTOBER 7,
1943, THEREON.

Comes now Charles Ralph Sentney, Bankrupt, and for an answer to the Petition of Harry Ashton, Trustee, seeking an order revoking bankrupt's discharge, and as his return to the order to show cause of October 7, 1943, issued by the court on said petition, Bankrupt denies and alleges as follows:

I.

That if it is true that the Trustee is informed that the Bankrupt committed the fraud alleged in Trustee's petition, that the Trustee is misinformed, and Bankrupt denies that at the time of filing his petition of bankruptcy herein and/or during all of the six (6) months immediately thereafter bankrupt was entitled or had an interest in or had any right in any property, thing or chose in action which he could or might have passed title to to the Trustee in Bankruptcy herein, or to which title passed by operation of law to the Trustee in Bankruptcy; this Bankrupt denies that he concealed the existence of any property or the existence of any property under any Trust from the Trustee in Bankruptcy, from the court or from the creditors of his Estate.

II.

That on or about the 10th day of May, 1927, at Santa Ana, Calif- [8]ornia, W. A. Huff and Edith Huff made and entered into a certain Spendthrift Trust wherein the First National Bank of Santa Ana was Trustee, and in which certain other persons were beneficiaries under certain conditions and restrictions set forth in said Trust.

III.

That under the terms of said Trust as it existed at the time of bankruptcy herein, and during all of six (6) months and one (1) day thereafter, Bankrupt had no right, title or interest in or to any property of any kind or character, and under the express terms of said Trust could not make, transfer, sell, pledge, mortgage, alienate, anticipate, or in any other manner convey any interest in the subject matter of said Trust or any rights therein or thereto.

IV.

That at the date of bankruptcy herein, and for six (6) months and one (1) day thereafter, the property of said Trust was vested in the Trustee, the First National Bank of Santa Ana, for Edith Huff and other persons, not including the Bankrupt, and that said Edith Huff and said other persons, at the date of bankruptcy herein and for a period of more than six (6) months and one (1) day after the date of bankruptcy, were living. That no rights of any kind had or could mature in the Bankrupt until after the death of Edith Huff.

V.

Bankrupt admits that he had knowledge of the existence of said Trust No. 245, and alleges that he also had knowledge that he was not entitled to any property under said Trust or any interest in any property therein at the time of bankruptcy, but that he had a mere possibility that he would be a beneficiary under said Trust, determinable only following the death of Edith Huff, who at the date of bankruptcy and all of the six (6) months thereafter was a living person.

VI.

Bankrupt denies each, all and every fact stated in Paragraph IV of Trustee's Petition, denying the same both generally and specifically; denies that the facts did not warrant the granting of a discharge to [9] bankrupt; denies that bankrupt concealed any property; denies that bankrupt committed any offense, either punishable by imprisonment or otherwise; denies that he concealed any assets; denies that he made a false oath.

Alleges that his statement in Schedule B-4, that he had no property subject to any right or power in him to dispose of or to change, was true; denies that he falsely stated anything in Schedule B-4 or in any other section or portion of his schedules in bankruptcy or in his petition for bankruptcy.

As a separate defense, bankrupt alleges:

I.

That immediately prior to the filing of his petition in bankruptcy and the making and filing of his bankrupt

schedule herein, he fully and fairly stated to his attorney, Martin Goldman, a member of the Bar of this court, all of the facts known by him concerning the existence of and the substance of said Trust No. 245; that said Martin Goldman examined a copy of the original Trust and amendments thereto and then and there gave to bankrupt a legal opinion wherein Martin Goldman stated to bankrupt that there was no vested right in the bankrupt and could be no vested right in the bankrupt to any property or any rights under said Trust which bankrupt could, by any means, have transferred or which by any means any creditor of the bankrupt could charge; that said Trust by its expressed terms prohibited any alienation by bankrupt of any interest which he might at any time acquire thereafter, and that there was no property or any property rights existent in the bankrupt which by any means could have passed to the Trustee in Bankruptcy or be conveyed to him. That bankrupt relied upon said legal opinion, then believed and has since continued to believe and now believes that said opinion was and is correct. That bankrupt had no then, or thereafter or present intention to defraud, conceal property or make a false oath.

Wherefore, Bankrupt prays that the Order to Show Cause be dismissed. [10]

RUPERT B. TURNBULL & MARTIN GOLDMAN

By: Martin Goldman

Attorneys for Bankrupt

[Verified.]

[Endorsed]: Filed Oct. 13, 1943, at 40 Min. past 9 o'clock A. M. Hubert F. Laugharn, Referee. M. E. Marsh, Clerk. W.

[Endorsed]: Filed Feb. 4, 1944. [11]

[Title of District Court and Cause.]

ANSWER OF BANKRUPT, CHARLES RALPH SENTNEY, TO PETITION FOR ORDER TO SHOW CAUSE FOR TURN OVER PROCEEDINGS AND BANKRUPT'S RETURN TO ORDER TO SHOW CAUSE GRANTED THEREON ON OCTOBER 7, 1943.

Comes now the Bankrupt, Charles Ralph Sentney, and answering the petition of Harry Ashton, Trustee, for an order to show cause to require the Bankrupt to convey an interest in Trust No. 245, First National Bank of Santa Ana, California, Trustee, as made by W. A. Huff and Edith Huff, and makes and files this, his answer to said petition and his return to the order to show cause issued thereon on October 7, 1943, by the Referee herein.

Bankrupt denies and alleges as follows:

I.

This Bankrupt denies that on the 16th day of October, 1943, he had any interest or any title to any property, real, personal, or mixed, or any chose in action in and to Trust No. 245, First National Bank of Santa Ana, California, Trustee, to-wit, the Trust referred to in Trustee's said petition.

II.

Bankrupt denies that there was any title, right or interest which the Bankrupt had or which was conveyed by operation of law at the date of bankruptcy herein, or any time within six (6) months succeeding the [12] date of bankruptcy.

As a Separate Defense to Said Petition, and as a Separate Return to the Order to Show Cause of October 7, 1943, Herein, Bankrupt Alleges:

I.

That on or about the 10th day of May, 1927, at Santa Ana, California, W. A. Huff and Edith Huff made and

entered into a certain Spendthrift Trust wherein the First National Bank of Santa Ana was Trustee, and in which certain other persons were beneficiaries under certain conditions and restrictions set forth in said Trust.

II.

That under the terms of said Trust as it existed at the time of bankruptcy herein, and during all of six (6) months and one (1) day thereafter, Bankrupt had no right, title or interest in or to any property of any kind or character, and under the express terms of said Trust could not make, transfer, sell, pledge, mortgage, alienate, anticipate, or in any other manner convey any interest in the subject matter of said Trust or any rights therein or thereto.

III.

That at the date of bankruptcy herein, and for six (6) months and one (1) day thereafter, the property of said Trust was vested in the Trustee, the First National Bank of Santa Ana, for Edith Huff and other persons, not including the Bankrupt, and that said Edith Huff and said other persons at the date of bankruptcy herein, and for the period of more than six (6) months and one (1) day after the date of bankruptcy, were living. That no rights of any kind had or could mature in the Bankrupt until after the death of Edith Huff.

Wherefore, Bankrupt prays that the Order to Show Cause be dismissed.

RUPERT B. TURNBULL & MARTIN GOLDMAN

By Martin Goldman

Attorneys for Bankrupt

[Endorsed]: Filed Oct. 13, 1943, at 40 Min. past 9 o'clock A. M. Hubert F. Laugharn, Referee. M. E. Marsh, Clerk. W.

[Endorsed]: Filed Feb. 4 - 1944.

[Verified] [13]

[Title of District Court and Cause.]

ORDER

The debtor's voluntary Petition in Bankruptcy, Schedules and Statement of Affairs were filed herein on October 16, 1942, on which date he was adjudicated a voluntary bankrupt.

On the date of his adjudication there was in existence a certain Trust No. 245 created by W. A. Huff and Edith Huff as Trustors and The First National Bank of Santa Ana, California, as Trustee. The Declaration of Trust set forth the within bankrupt as one of the beneficiaries.

The pertinent provisions of the trust which have a bearing upon the determination of the within problem are the following:

"11.

"Each and every beneficiary under this trust is hereby restrained from, and shall be without right, power and/or authority to sell, transfer, pledge, mortgage, hypothecate, alienate, anticipate, or in any other manner affect or impair his or her beneficial and/or legal rights, titles, interests, claims and/or estates in and/or to the income and/or principal of this trust during the entire term thereof, nor shall the rights, titles, interests, and/or estates of any beneficiary hereunder be subject to the rights or claims of the creditors of any beneficiary nor subject nor liable to any process of law or Court upon the claim of any such creditor, and all the income and/or principal under this trust shall be transferable, payable and/or deliverable, only, solely, exclusively, and personally to the herein designated beneficiaries, or their lawful guardian or guardians hereunder at the time they are entitled to take the same

[121] under the terms of this trust, and the personal receipt of the designated beneficiary hereunder, or their lawful guardian, shall be a condition precedent to the payment or delivery of the same by said Trustee.

“12.

“The said Trustors herein named reserve to themselves the exclusive possession and use and enjoyment in, and all rights to, the rents, issues and profits of all the property herein set forth in Exhibit ‘A’, and all other properties that may be hereafter transferred, assigned, set over or conveyed to the Trustee, and each of said properties, for and during the term of the natural lives of both of said Trustors herein named; and it is further understood that this trust, being gratuitously created by said Trustors hereinbefore named, the right and power is hereby reserved unto said Trustors to revoke or amend this trust, in whole or in part, at any time, at their pleasure, during the lives of both of said Trustors, by request in writing addressed and delivered to said Trustee; and the Trustors further reserve the right to revoke any or all of said transfers, assignments or conveyances as to any of the property in Exhibit ‘A’, described, or any other property which may be transferred, assigned or conveyed to said Trustee under this trust,”

and an amendment to the Declaration of Trust executed on August 3, 1935, after mentioning a number of beneficiaries, contains the following:

“‘After payment of the funeral expenses, expenses of last illness and legal debts of the trustor, Edith

Huff, together with the payments of the sums provided in subdivisions 'First' to 'Seventh', both inclusive, the balance of said one-half of the entire trust estate then remaining in the hands of the trustee shall be distributed, disposed of and handled in the following manner:.

“ ‘An equal one-third share of said portion of the trust estate then remaining shall be distributed to Bernice Lutz, niece of said trustor, Edith Huff. Should said Bernice Lutz be not surviving at the death of said Edith Huff, but be survived by bodily issue, then [122] said portion of said estate so to be distributed to said Bernice Lutz shall be distributed to said bodily issue per stirpes. Should said Bernice Lutz not be surviving and not be survived by bodily issue, then said portion of said estate so to be distributed to said Bernice Lutz shall be distributed to Ralph Sentney, brother of said Bernice Lutz, and should said Ralph Sentney be not surviving at said time, then one-fourth of said portion of said estate so to be distributed to Bernice Lutz shall be distributed to William Arthur Lutz, the husband of said Bernice Lutz, and the balance of said portion of said estate shall become a part of the trust estate’ ”, etc.

“ ‘An equal one-third share of said portion of the trust estate then remaining shall be distributed to Ralph Sentney, nephew of said Edith Huff. Should Ralph Sentney be not surviving at the date of death of said Edith Huff but be survived by bodily issue, then that portion of said estate so to be distributed to said Ralph Sentney per stirpes. If, however, said Ralph Sentney be not surviving and not be survived by bodily issue, then said portion of *of* said estate

shall be distributed to Bernice Lutz, the sister of said Ralph Sentney, and should said Bernice Lutz be not surviving at said time, and should said Ralph Sentney be not survived by bodily issue, then one-half of said portion of said estate so to be distributed to said Ralph Sentney shall be distributed to the wife of said Ralph Sentney, if he is married, and said wife is living with him and no proceedings for divorce or separate maintenance be pending between them at the time of the death of said Ralph Sentney,' " etc.

Charles Ralph Sentney, the within bankrupt, and the "Ralph Sentney" referred to hereinabove are one and the same.

The said trustor, Edith Huff, the aunt of the bankrupt, died on April 20, 1943, which date was more than six months after the date of adjudication herein.

The schedules of the bankrupt contain no reference to the interest of the bankrupt in the said trust, although it appears that [123] at the time of the preparation and filing of his schedules he had full knowledge of the said interest.

The Order of Discharge was made herein on December 9, 1942.

On October 7, 1943 the trustee filed herein a petition for an order revoking the discharge and a petition for an order requiring the bankrupt to show cause why the trustee should not be determined to be the owner of the bankrupt's beneficial interest in the said trust. Orders to Show Cause were issued upon the filing of the said petitions and upon the hearing thereon evidence both oral and documentary was introduced by the respective parties.

Passing for later consideration the effect of the "spend-thrift" and non-assignability provisions of the said Declaration of Trust, we shall consider the nature of the interest and estate of the bankrupt as of the date of his adjudication in bankruptcy.

The bankrupt was named to receive distribution of two separate interests:

(1) One-third share of the remaining portion of the trust which was to go to Bernice Lutz, the bankrupt's sister and the niece of the trustor, and should the said niece not be surviving at the death of the said Edith Huff and not be survived by bodily issue, then the said portion was to be distributed to the bankrupt should he be surviving at the time.

(2) An equal one-third portion of the remaining trust estate to the bankrupt should he be surviving at the date of death of said Edith Huff.

Bernice Lutz, the bankrupt's sister, was surviving at the date of death of the said Edith Huff and therefore we need give no further concern to the said first interest.

The bankrupt was surviving at the date of death of the said Edith Huff. His said interest which we are now considering was subject to

(1) The right of the trustor to revoke, change or eliminate altogether the beneficial interest of the bankrupt. [124] This she did not do. While the exercise of this right could well have reduced, enlarged or entirely eliminated the interest of the bankrupt, the trust was not destroyed by the said reservation.

California Jurisprudence "Trustee", Volume 25, at Sections 149;

"The individual, in conveying or transferring property in trust, may properly reserve a power of revocation; nor is the trust destroyed by such a reservation . . .

The provisions of the trust instrument remain operative until the power is exercised."

In fact, unless the trust is expressly made irrevocable by appropriate terms in the *declaration*, the same is now by statute revocable by the trustor. (Civil Code, Section 2280.)

A grantor may reserve in a deed a right to revoke. Such reservation is not prohibited by law. *Tennant v. John Tennant Memorial Home*, 167 Cal. 570.

A trust containing power of revocation is good until acted upon. *Nichols v. Emery*, 109 Cal. 323.

Likewise, if a trust contains the power of appointment, the particular interests created stand unless the power is used. *In re Wetmore*, 108 F. 520, Third Circuit (Penn.); *Crockanthorp v. Sickles*, 156 App. Div. 753, 141 N. Y. Supp. 370.

Therefore, we may disregard the point (1) above, raised by the bankrupt, that he had no interest for the reason that the same might be changed or eliminated altogether by the act of the trustor.

(2) The interest of the bankrupt would be defeated should he predecease his aunt.

A perplexing problem is presented when we seek to name and define the interest and estate of the bankrupt.

22 Cal. Jur., "Remainders and Reversions":

"Sec. 1. 'Remainder' — 'Executory Interest' — 'Conditional Limitation.'—In respect of the time of their enjoyment, estates or interests in property are

either present or future. A future estate which is limited to commence upon the ex- [125] piration of a preceding or primary estate is designated as an estate or interest in remainder; . . .”

“Sec. 3. ‘Vested’ and ‘Contingent’ Estates and interests.—Referring to the nature of future estates, it has been said with much truth that ‘there is no subject of the law more abstruse or in which greater refinement of learning has been displayed.’ The Civil Code classifies such estates and interests as being either ‘vested’ or ‘contingent’, and supplies general definitions as to the meaning of these terms; but it is to be noted that the words in question are in common use in several branches of the law, and that their meaning is varied by the particular legal right or situation to which they are applied. The words have no meaning which is common to all situations; and much confusion of thought and misunderstanding has resulted from an assumption that they have a definition which is of universal application. In respect of the creation and attributes of future estates, the terms ‘vested’ and ‘contingent’ are employed in the law of perpetuities to denote alienability and inalienability, and in the law of deeds and wills to describe interests which are descendible, devisable and alienable, and those which have not this quality. In these connections the words in question have reference to ownership as being dependent upon the survival of the person who is named as the taker of the future estate or interest. If ownership is dependent upon survival, the estate is contingent; if ownership is not dependent upon survival, the estate is vested.”

“Sec. 10. Provision for Defeasance—Revocation by Grantor. In creating a future estate or interest

the owner of the property may provide for its defeasance; nor is the estate invalidated merely because it is defeasible. Accordingly, it is held that a deed of an estate in remainder is not to be held valid by reason of the fact that it contains a clause reserving to the grantor a power to revoke the grant. But the individual, by the creation of future estates which are limited to take effect at the termination of a [126] beneficial life estate in himself, may preclude himself to revoke the trust and destroy the future estates. Nor is it material whether the future estates are 'vested' or 'contingent' in any of the senses in which these terms are used."

"Sec. 11. The law recognizes a right in the individual to create future estates or interest which are conditional or contingent,"

"Sec. 13. . . . Furthermore although the estate is contingent upon the survival of the person who is named as taker, it is considered to be alienable and subject to the claims of creditors. The assignee or creditor becomes substituted for the designated person, and his right to the property is dependent upon such person's survival at the time when the estate is limited to take effect in possession or enjoyment"

"Sec. 14. Breach of Condition or Happening of Contingency. Being limited to take effect upon the happening of a contingent event, or upon nonperformance of a lawful condition by the taker of the primary estate, the future estate or interest becomes vested in ownership upon the occurrence of the event"

"Sec. 21. . . . It has long been settled, however, that an estate is descendible, devisable and alienable, although possession of the property may be postponed until a future time,—and although it is subject to being cut off or defeated by the occurrence of a contingent event or situation. The statute provides that 'future interests pass by succession, will and transfer, in the same manner as present interest.' . . . But the law does not recognize as an estate or interest 'a mere possibility' that a person may acquire property,—such as the expectancy of an heir apparent,—and the 'possibility' or expectation of ownership is deemed not to be a subject of transfer or alienation."

The nature and extent of the interest is to be determined by California statutes. *Eaton v. Boston Safe Deposit & Trust Company*, 240 U.S. 427; 36 A. B. R. 701. *Nichols v. Eaton*, 91 U.S. [127] 716.

The interest here is obviously more than a plain expectancy or a possibility and it cannot be considered in the same status as the hope of an heir to inherit by will or succession where there has been no death at the time of bankruptcy. In the *Matter of First National Bank & Trust Company of Elmira*, 34 A. B. R. (N.S.) 806.

The argument of counsel for the bankrupt that the interest is a mere expectancy such as the right of a beneficiary under an insurance policy where the insured is still living, is not applicable here.

" . . . a possibility, a hope of an heir of a person still living, or of a beneficiary under an insurance policy which is subject to change of beneficiary, does not pass to the trustee in bankruptcy. Such inter-

ests are not property." *Matter of First Nat. Bank & Trust Co.*, 34 A.B.R. (N.S.) 806, at 810.

The interest, even though contingent, and in that sense not "vested", being an interest to be received in possession upon the death of the testator, would pass to the trustee. *Noonan v. State Bank of Livermore*, 20 A. B. R. (N.S.) 642.

The interest in question is a future estate. Civil Code Sec. 767:

"A future estate may be limited by the act of the party to commence in possession at a future day, either without the intervention of a precedent estate, or on the termination, by lapse of time or otherwise, of a precedent estate created at the same time."

Likewise, it is a remainder interest. Civil Code Sec. 769:

"When a future estate . . . is dependent on a precedent estate, it may be called a remainder, and may be created and transferred by that name."

and a remainder estate may be limited upon the happening of an event as here upon the demise of the said Edith Huff within the lifetime of the bankrupt. [128]

Assuming that the Declaration of Trust did not contain the "spendthrift" and "nonassignment" provisions, the trustee would then take the said interest of the bankrupt; and this is so even though the trustor might revoke the interest or the bankrupt might predecease the trustor.

In the *Matter of St. John*, 105 F. 234 (District Court of New York), property was given to trustees, the income to the daughter for life, the principal on her death to be divided between her children; if none surviving her, between testator's two sons. The daughter was still alive upon the bankruptcy of one of the sons. The bank-

rupt contended that the interest was a contingent remainder dependent upon two contingencies: (1) if the daughter left survivors, and (2) upon the bankrupt's surviving the sister. The court held that the interest of the bankrupt passed to his trustee, the case determining that the interest of the bankrupt is an expectant estate. The bankrupt's estate is a future estate limited to commence in possession at a future time, on the death of the daughter and on the contingency that she die without child surviving. Section 28 (New York): "Where a future estate is dependent on a precedent estate, it may be termed a remainder"; and Section 30 holds a remainder vested "where there is a person in being who would have an immediate right to the possession of the property on the determination of all the intermediate or precedent estates. It is contingent while the person to whom or the event on which it is limited to take effect remains uncertain." The Court stated: "The fact that the possession of the estate depends upon a future contingency which may never happen, although it lessens materially the value of the estate, does not destroy its character as a vested interest which passed to the trustee."

Likewise, under the Michigan law the expectant interest of the bankrupt in corpus funds, although contingent upon bankrupt's survival of life beneficiary vests in the trustee. *Horton v. Moore*, 42 A. B. R. (N.S.) 485.

Such interest likewise passes in Maryland. *Matter of [129] Moore*, 10 A. B. R. (N. S.) 568.

A remainder interest even though the same may be lost passes to the trustee. *Dudley, Jr. v. Tucker*, 6 A. B. R. (N. S.) 95.

Even though the possession or enjoyment may be contingent upon the survival of the taker, the estate is nevertheless vested. *Estate of Ritzman*, 186 Cal. 567.

And it is considered alienable and subject to the claims of creditors. *Newlove v. Mercantile Trust Co.*, 156 Cal. 657.

Although the person named as the taker of the future estate does not have the right to claim the property until the contingent event or situation shall have happened or arisen. *Estate of Glann*, 177 Cal. 347.

And unless by the provisions of the trust instrument the beneficiary is restrained, he has a right to assign his interest. *Title Ins. & Trust Co. v. Duffill*, 191 Cal. 629.

Noonan v. State Bank of Livermore, 20 A. B. R. (N. S.) 642 (State of Iowa): "If it is held that the interest . . . was a contingent remainder, then under federal statute, the question arises: Could the plaintiff 'by any means have transferred' his interest in this property? We have settled this question in the case of *McDonald v. Bayard Savings Bank*, 123 Iowa 413, 98 N. W. 1025, where we held, in fact, that the contingent interest of a remainderman is such a present and existing one as to be susceptible of conveyance by deed . . . This seems to be the general rule as to rights under contingent remainders."

Sinclair v. Crabtree, 211 Cal. 524: Under 693 Civil Code, future interest is property either vested or contingent, and under 699 Civil Code: "Future interests pass by succession, will, and transfer, in the same manner as present interests."

The following are additional cases in which the courts have determined that the interests passed to the trustee in bankruptcy:

In re Wood, 3 A. B. R. 572; 98 F. 972.

In re Peter J. Shenberger, 4 A.B.R. 487; 102 F. 978.

In re Nelson A. St. John, 5 A.B.R. 190; 105 F. 234. [130]

In re Twaddell, 6 A.B.R. 539; 110 F. 145.

In re McHarry, 7 A.B.R. 83; 111 F. 498.

Woods v. Little, 13 A.B.R. 742; 134 F. 229.

Matter of First Nat. Bank & Trust Co., 34 A.B.R. (N.S.) 806:

"On or about September 29, 1920, Ella M. Brand (hereinafter called the settlor) executed a deed of trust to the Merchants National Bank of Elmira, N. Y. It by merger became the First National Bank and Trust Company of Elmira. By the deed the settlor transferred to the trustee certain personal property and unimproved real property in trust to pay the income to her for life and upon her death, to distribute the principal to named beneficiaries, including her daughter, Mrs. Keeton."

"About January 19, 1933, said Henrietta S. Keeton was, on her voluntary petition, adjudged a bankrupt. James J. O'Connor was duly appointed trustee in bankruptcy. He demanded the share of Henrietta S. Keeton from the trustee herein. Both Mrs. Keeton and Mr. O'Connor, her trustee in bankruptcy, are parties to this proceeding. Her interest in the trust estate was, in good faith, omitted from the schedules in bankruptcy. Upon her examination she disclosed it. She has not in any way assigned or parted therewith.

"The question for determination is whether Mrs. Keeton's distributive share in remainder passed to her trustee in bankruptcy."

"When Mrs. Keeton was adjudicated bankrupt, the settlor of this trust was living and the trust was

in force. Was her beneficial interest in remainder then 'property' which she 'could by any means have transferred?' This question must be determined under the law of the state of New York."

"Section 15 of the Personal Property Law reads:

" 'The right of the beneficiary to enforce the performance of a trust to receive the income of personal property, and to apply it to the use of any person, cannot be transferred by assignment or otherwise. But the right and interest of the beneficiary of any other trust in personal property may be transferred.'

"Section 59 of the Real Property Law reads: [131]

" 'An expectant estate is descendible and alienable, in the same manner as an estate in possession.'

"We think Mrs. Keeton's interest was 'property' and though not vested in possession was vested. Whether vested or contingent, it was transferable and alienable."

"We are cited to *Matter of Hoadley* (D. C., N.Y.), 3 Am. B. R. 780, 101 F. 233. Of this case 3 Remington on Bankruptcy, Sec. 32, says: 'In this case the distinction was drawn between contingency of person and contingency of event.' In the present case the only contingency is as to the event. Even a contingency as to the person does not seem to make a trust interest non-transferable under the later cases above cited."

" . . . a possibility, a hope of an heir of a person still living, or of a beneficiary under an insurance policy which is subject to change of beneficiary, does not pass to the trustee in bankruptcy. Such interests are not property. As well said in *National*

Park v. Billings, supra, 144 App. Div. 536, 540: 'That which the heir has from the *curtesy* of his ancestor, and which is nothing more than the mere hope of succession' is not the subject of disposition. 'Mere expectancies and bare possibilities of acquiring property do not pass. They do not constitute property nor title to property.' (3 Remington Bankruptcy, Sec. 1199.) In Matter of Baker (C.C.A., 6th Circ.), 8 Am. B.R. (N.S.) 448, 13 F. (2d) 707, Baker purchased of two brothers their respective expectancies in their mother's estate. He became bankrupt during his mother's lifetime. The court held that neither Baker's individual interest nor the interest acquired from his brothers passed to the trustee in bankruptcy."

Where property was left to six sons, no portion to be sold for ten years, the son's share to be forfeited if he contracted bad habits and likewise to be forfeited should the son die before division of property, each son acquired a vested interest subject to divestiture upon the happening of the subsequent act and [132] the court determined there was a vested interest which could be transferred by the devisee. Newlove v. Mercantile Trust Company of San Francisco, 156 Cal. 657.

Attention is now directed to the "spendthrift" and "non-assignable" provisions of the trust as hereinabove set forth.

California recognizes "spendthrift" trusts. Kelly v. Kelly, 11 C. (2d) 356: "It is of the essence of a spendthrift trust that it is not subject to voluntary alienation by the cestui, nor subject to involuntary alienation through attachment or other process at the suit of his creditors. (McColgan v. Walter Mc-

Gee, Inc., 172 Cal. 182 (155 Pac. 995, Ann. Cas. 1917D. 1050); Seymour v. McAvoy, 121 Cal. 438 (53 Pac. 946, 41 L.R.A. 544); San Diego Trust etc. Bank v. Heustis, 121 Cal. App. 675 (10 Pac. (2d) 158); Canfield v. Security First Nat. Bank, 8 Cal. App. (2d) 277 (48 Pac. (2d) 133); 1 Bogert, Trusts and Trustees, p. 75; 43 Harvard Law Review, 84; 21 Cal. Law Rev. 142; 22 Cal. Law Rev. 482.)”

Inasmuch as a gift takes nothing from the prior or subsequent creditors of the beneficiary to which they previously had right to look for payment, they cannot complain that the donor has provided that the income be paid personally to the beneficiary or be not subject to the claims of creditors. 4 Cal. Law Review, 426. *McColgan v. Magee, Inc.*, 172 Cal. 182.

Civil Code 859 may be considered an exception to this doctrine, and where the trust is created to receive the rents and profits of real or personal property, the sum, beyond a fund necessary for the education and support of the person for whose benefit the trust is created, is liable to the claims of creditors of such persons. *Canfield v. Security First National Bank*, 8 C.A. (2) 277, and 13 Cal. 2d, page 1.

Likewise, restraint may be made upon assignment of interest. *Title Ins. & Trust Co. v. Duffill*, 191 Cal. 629; *Curtin v. Kowalsky*, 145 Cal. 431. [133]

Unless restrained by the provisions of the trust instrument, the beneficiary has a perfect right to assign his interest. “Trusts”, 25 Cal. Jur. 173.

Where a trust is created for the benefit of another the beneficiary may be restrained by appropriate provisions of the trust instrument from disposing of his trust interest or ownership. 25 Cal. Jur. 174.

It is insisted by counsel for the trustee that even though the instrument is by its terms nonassignable and is accompanied by provisions deemed appropriate to create a "spendthrift trust", that since in certain instances the bankrupt could make a transfer of the property for a consideration which would be enforced in equity, therefore the "property" was such as the bankrupt (Section 70a (5)) "could by any means have transferred".

This test has been disapproved by the Supreme Court of the United States and it determined that Section 70a (5) which vests the trustee with all the property that the bankrupt "could by any means have transferred" has no application to spendthrift trusts valid and effective against creditors, notwithstanding the beneficiary, under state law as construed by the highest court of the state, may anticipate and assign for his own benefit, to the exclusion of creditors, said power having been determined in effect in a legal exemption in favor of the beneficiary attaching to and inherent in the property. *Eaton v. Boston Safe Deposit & Trust Company*, 36 A. B. R. 701; 240 U.S. 427.

Edith Huff, the Trustor, died more than six months after the filing of the bankruptcy petition herein, therefore the new Section 70a (7) and (8) can have no application here.

70a. The trustee . . . shall be vested by operation of law with the title of the bankrupt as of the date of the filing of the petition in bankruptcy. . . to all . . . (7) contingent remainders, executory devises and limitations, rights of entry for condition broken, rights or possibilities of reverter, and like interests in real property, which were nonassignable prior [134] to bankruptcy and which, within six months thereafter, become assignable in-

terests or estates or give rise to powers in the bankrupt to acquire assignable interests or estates; and (8) . . . All property which vests in the bankrupt within six months after bankruptcy by bequest, devise, or inheritance shall vest in the trustee. . .”

It will be recalled that Section 70a(5) gives the trustee title to property which the bankrupt “could by any means have transferred or which might have been levied upon and sold”, etc.

In some states by application of the state law certain of the interests did not meet the qualifications of subdivision (5) and were determined by the courts not to constitute assets. The said subdivisions (7) and (8) were added which brought the interests into the estate as assets if the condition arose or the death occurred within six months of the filing of the petition.

The trustee points out that the bankrupt should have scheduled the interest. The trustee is, of course, right in connection with this point.

Section 7(8) of the Bankruptcy Act provides that the bankrupt “shall . . . prepare, make oath to, and file in court . . . a schedule of his property.”

Section 30 of the Bankruptcy Act provides that “all necessary rules, forms, and orders as to procedure and for carrying the provisions of this title into force and effect shall be prescribed, and may be amended from time to time, by the Supreme Court of the United States.” Under this Section the Supreme Court has prescribed the form of the schedules, and the schedules established by the Supreme Court set forth on Schedule B-4; “Property in reversion, remainder or expectancy, including property held in trust for the Debtor or subject to any power or right to dispose of or to charge.”

Eight of the Supreme Court Judges who were sitting at the time the General Orders and Forms were promulgated were on the bench and had previously decided the case of *Pearsall v. Great Northern Railway Co.*, 161 U.S. 646. This decision went to great length in defining vested rights, expectancies, contingent interests, etc., so it can be [135] said that we have rather definite information as to what the Supreme Court intended by Schedule B-4.

I can personally say that after attempting to review many reported cases on the vesting or nonvesting in the trustee of expectancies, vested and contingent remainders, reversions, conditional limitations, rights of entry for conditions broken, executory devises, etc., that it would be an imprudent and hazardous procedure to allow the bankrupt in each instance to make his own determination as to whether or not the particular interest vested. He is required to list in detail his property which he claims is exempt so that the Court may pass upon the exemption. Likewise he is required to list and schedule those interests, whether they vest in the trustee or not, which are enumerated in Schedule B-4. The scheduling of the same allows the creditors, the trustee and the Court to investigate the particular kind and character of interest and reach a determination as to whether or not the same passes into the Bankruptcy Court. Most certainly the determination should not be left with the bankrupt.

In many cases such as in the instant case there is no record available pertaining to the interest unless the same is supplied by the bankrupt.

Apparently information of the alleged interest came to the creditors after the discharge was granted.

At the first examination of the bankrupt the bankrupt did not reveal the existence of the interest. On the other

hand, it must be admitted that he was not asked the direct question as to whether or not he had any such interest.

Counsel for the trustee maintains that the discharge of the bankrupt should be revoked because of the said concealment. He has cited a number of cases, with which I do not disagree, showing the general power of the Court to revoke discharges in instances other than upon grounds set forth in Section 15.

In this case, however, as soon as the bankrupt and his counsel were confronted by the trustee with the information which he [136] had secured in connection with the interest in said trust, they readily admitted the said interest. Counsel for the bankrupt states that at and prior to the bankruptcy proceedings the bankrupt had presented to him the question of whether or not the said interest was an asset; that he had spent many hours investigating the law on the subject, and that he had rendered an opinion to the bankrupt that the same did not pass to the trustee and was not an asset of the estate and need not be scheduled. At the hearing there was introduced in evidence a brief which had been prepared by the attorney for the bankrupt at the time he originally gave the said advice to the bankrupt when he was preparing the schedules of the bankrupt. I must frankly admit that I agree with his conclusion that the interest is not an asset herein, but I do not agree with his conclusion that the same need not be scheduled. On the other hand, I cannot find that there was any bad faith or concealment. Neither can I find that the bankrupt knowingly or intentionally made a false oath.

Matter of Soroko, 53 A. B. R. (N. S.) 223;

"Accordingly, it may be assumed that the advice given to the bankrupt by his attorney was erroneous

and that the bankrupt has not established that his statements under oath on the two occasions were true. The statute, however, bars a discharge only if a false oath was made 'knowingly and fraudulently', that is, if the false statement constituted an 'intentional untruth'. In *re Slocum* (C.C.A., 2nd. Cir.), 11 Am. B.R. (N.S.) 16, 22 F. (2d) 282, 285."

In *re Wyche*, 51 Fed. Supp. 825:

"To justify a denial of bankrupt's discharge, failure to list assets must have been made or done with a willful and fraudulent intent. Bankr. Act. Sec. 14, sub. c(1), 11 U. S. C. A. Sec. 32, Sub. c(1)."

"... the jurisprudence is well established that the act of the bankrupt complained of must have been made or done with a wilful and fraudulent intent to justify denial of bank- [137] rupt's discharge. Collier, 14th Ed., Vol. 1, p. 1360, provides: 'In order to justify a refusal of discharge under Sec. 14c (4), it must be shown that the acts complained of were done with an intent to hinder, delay, or defraud his creditors. This intent, moreover, must be an actual fraudulent intent as distinguished from constructive intent.'"

Therefore, both petitions of the trustee are denied.

[Dated]: December 6, 1943.

Hubert F. Laugharn
Hubert F. Laugharn
Referee in Bankruptcy

[Endorsed]: Filed Dec. 6-1943 at 30 Min, past 3 o'clock P. M. Hubert F. Laugharn, Referee. M. E. Marsh, Clerk. W.

[Endorsed]: Filed Feb. 4, 1944. [138]

[Title of District Court and Cause.]

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER.

The trustee herein, having filed his petition seeking an order vacating and setting aside the discharge of the bankrupt, and also having filed his petition seeking an order requiring the bankrupt to turn over to the trustee, as an asset of the estate, the interest of the bankrupt and the inheritance of the bankrupt under a trust known as Trust No. 245, The First National Bank of Santa Ana, California, Trustee, and the bankrupt having filed his answers to said petitions and the returns to the orders to show cause issued thereon, and the matters having come on regularly for hearing before the Referee in Bankruptcy, the trustee being personally present and represented at said hearing by his Counsel, Earl E. Moss, Esq. and Louis Lombardi, the bankrupt being represented by his counsel, Rupert B. Turnbull and Martin Goldman, and the First National Bank of Santa Ana, California, being represented by A. M. Bradley, Esq. its attorney, and evidence, oral and documentary, having been introduced by the parties, and it having been stipulated by counsel for the respective parties that all the evidence offered might be considered as evidence on each of the petitions and orders to show cause, and the matters having been submitted to the Referee on briefs, and the respective parties having filed their briefs, and the same having been considered by the Court, the Court now makes its Findings of Fact with respect to the trustee's seeking order revoking the discharge of the bankrupt. The Court finds, with respect to [139] the petition of the trustee seeking an order revoking the discharge of the bankrupt, as follows:

I.

That on the 16th day of October, 1942, the above-named bankrupt filed in the above-entitled court a voluntary petition in bankruptcy, duly signed by him and verified before a notary public, and on said date an order of adjudication was duly entered.

II.

That on the 4th day of November, 1942, Harry Ashton was duly appointed Trustee in Bankruptcy of the estate of said bankrupt and thereafter qualified as such trustee and ever since has been and now is the duly appointed, qualified and acting trustee of the estate of said bankrupt.

III.

That on the said 16th day of October, 1942, there was in existence a certain trust known as Trust No. 245, created by W. A. Huff and Edith Huff as trustors, and the First National Bank of Santa Ana, as trustee, and on said date the bankrupt was one of the beneficiaries therein. That said trust contained, among others, the following provisions:

“Each and every beneficiary under this trust is hereby restrained from, and shall be without right, power and/or authority to sell, transfer, pledge, mortgage, hypothecate, alienate, anticipate, or in any other manner affect or impair his or her beneficial and/or legal rights, titles, interests, claims and/or estates, in and/or to the income and/or principal of this trust during the entire term thereof, nor shall the rights, titles, interests, and/or estates of any beneficiary hereunder be subject to the rights or claims of the creditors of any beneficiary nor subject nor libale [140] to any process of law or

Court upon the claim of any such creditor, and all the income and/or principal under this trust shall be transferable, payable and/or deliverable, only, solely, *exclusively*, and personally to the herein designated beneficiaries, or their lawful guardian or guardians hereunder at the time they are entitled to take the same under the terms of this trust, and the personal receipt of the designated beneficiary hereunder, or their lawful guardian, shall be a condition precedent to the payment or delivery of the same by said Trustee.

“12.

“The said Trustors herein named reserve to themselves the exclusive possession and use and enjoyment in, and all rights to, the rents, issues and profits of all the property herein set forth in Exhibit “a”. and all other properties that may be hereafter transferred, assigned, set over or *conveyed* to the Trustee, and each of said properties, for and during the term of the natural lives of both of said Trustors herein named; and it is further understood that this trust, being gratuitously created by said Trustors hereinbefore named, the right and power is hereby reserved unto said Trustors to revoke or amend this trust, in whole or in part, at any time, at their pleasure, during the lives of both of said Trustors, by request in writing addressed and delivered to said Trustee; and the Trustors further reserve the right to revoke any or all of said transfers, assignments or conveyances as to any of the property in Exhibit “A” described, [141] or any other property which may be transferred, assigned or conveyed to said Trustee under this trust, . . .”

and an amendment to the Declaration of Trust executed on August 3, 1935, after mentioning a number of beneficiaries, contains the following:

“ ‘After payment of the funeral expenses, expenses of last illness and legal debts of the trustor, Edith Huff, together with the payments of the sums provided in subdivisions “First” to “Seventh”, both inclusive, the balance of said one-half of the entire trust estate then remaining in the hands of the trustee shall be distributed, disposed of and handled in the following manner:

“ ‘An equal one-third share of said portion of the trust estate then remaining shall be distributed to Bernice Lutz, niece of said trustor, Edith Huff. Should said Bernice Lutz be not surviving at the death of said Edith Huff, but be survived by bodily issue, then said portion of said estate so to be distributed to said Bernice Lutz shall be distributed to said bodily issue per stirpes. Should said Bernice Lutz not be surviving and not be survived by bodily issue, then said portion of said estate so to be distributed to said Bernice Lutz shall be distributed to Ralph Sentney, brother of said Bernice Lutz, and should said Ralph Sentney be not surviving at said time, then one-fourth of said portion of said estate so to be distributed to Bernice Lutz shall be distributed to William Arthur Lutz, the husband of said Bernice Lutz, and the balance of said portion of said estate [142] shall become a part of the trust estate’ ”, etc.

“ ‘An equal one-third share of said portion of the trust estate then remaining shall be distributed to Ralph Sentney, nephew of said Edith Huff. Should Ralph Sentney be not surviving at the date of death

of said Edith Huff, but be survived by bodily issue, then that portion of said estate so to be distributed to said Ralph Sentney shall be distributed to the bodily issue of said Ralph Sentney per stirpes. If, however, said Ralph Sentney be not surviving and not be survived by bodily issue, then said portion of said estate shall be distributed to Bernice Lutz, the sister of said Ralph Sentney, and should said Bernice Lutz be not surviving at said time, and should said Ralph Sentney be not survived by bodily issue, then one-half of said portion of said estate so to be distributed to said Ralph Sentney shall be distributed to the wife of said Ralph Sentney, if he is married, and said wife is living with him and no proceedings for divorce or separate maintenance be pending between them at the time of the death of said Ralph Sentney,' ” etc.

IV.

That Charles Ralph Sentney, the bankrupt herein, and Ralph Sentney mentioned in said trust are one and the same person.

V.

That the surviving trustor in said trust, said Edith Huff, the aunt of the bankrupt, died on April 20, 1943, more than six months after the date of adjudication herein.

VI.

That Schedule B-4 of the schedules in bankruptcy, signed [143] and verified by the bankrupt and attached to his petition in bankruptcy herein is as follows:

Schedule B-4

Property in reversion, remainder or expectancy, including property held in trust for the Debtor or subject to any power or right to dispose of or to charge.

(N. B.—A particular description of each interest must be entered, with a statement of the location of the property, the names and description of the persons now enjoying the same, the value thereof, and from whom and in what manner debtor's interest in such property is or will be derived. If all or any of the debtor's property has been conveyed by deed of assignment, or otherwise, for the benefit of creditors, the date of such deed should be stated, the name and address of the person to whom the property was conveyed, the amount realized as the proceeds thereof, and the disposal of the same, as far as know to the debtor.)

General Interest	Particular Description	Estimated value of Interest	
Interest in Land		Dollars	Cents
	None		

Personal Property			
	None		

Property in Money, Stock, Shares, Bonds, Annuities, etc.			
	None		

Rights and Powers, Legacies and Bequests			
	None		
Total		None	

VII.

That no mention was made by said bankrupt at any place in said schedules, or his statement of affairs filed concurrently therewith, of the existence of said trust. That the bankrupt, for many [144] years prior to said 16th day of October, 1942, knew of the existence of said trust and the provisions thereof. That shortly prior to the filing of the petition herein, the bankrupt procured a copy of the Declaration of Trust with the amendments thereto, and submitted the same to Martin Goldman, his attorney in this proceeding, and said Martin Goldman prepared a brief to determine whether or not the law required the bankrupt to describe said interest in said trust in the schedules in bankruptcy, which said brief consists of the first three pages of "Trustee's Exhibit 2" in this proceeding. That both before and after the preparation of said brief, the said bankrupt and his said attorney, Martin Goldman, discussed in detail the question of the necessity of describing said interest in said trust in the schedules in bankruptcy. That after making said search of the law and preparing a brief thereon, said Martin Goldman advised the bankrupt that there was no property right in said trust which should, or ought to be, described in said schedules.

VIII.

That at the first meeting of the creditors of said bankrupt, held on the 4th day of November, 1942, the said bankrupt testified as a witness and did not reveal the existence of said trust and his interest therein.

IX.

That an order was made by the above-entitled court on the 9th day of December, 1942, granting said bankrupt

a discharge; that neither the trustee of said bankrupt's estate nor the creditors thereof, nor the court knew of the existence of said trust prior to about the first day of September, 1943. That on October 7, 1943, the trustee of said bankrupt's estate filed a petition for an order revoking the bankrupt's discharge.

From the foregoing findings of fact, the court makes the following conclusions of law:

I.

That at the date of the filing of the petition in bank- [145] ruptcy, and for a period of six months continuously thereafter, and for a period of six months after the adjudication of bankruptcy herein, and during all of said times, the bankrupt had no property interest in Trust No. 245, the First National Bank of Santa Ana, Trustee, which the bankrupt could by any means have transferred, and that there was no property in said Trust which could or did pass by operation of law to Trustee in bankruptcy.

II.

That the interest of the bankrupt in the said trust, as above set forth on the date of the filing of the petition in bankruptcy, should have been described by the bankrupt in Schedule B-4 of his schedules in bankruptcy, regardless of the fact that the interest did not pass to the Trustee.

III.

That the bankrupt was not guilty of any bad faith or concealment of assets or knowingly or intentionally making a false oath.

IV.

That the petition of the trustee for an order revoking the discharge of the bankrupt should be denied and said petition dismissed.

Findings of fact with respect to the petition of the trustee for an order to show cause requiring an order declaring that the estate of the bankrupt and the trustee are the owners of a beneficial interest in Trust No. 245, First National Bank of Santa Ana, California:

I.

The Court finds it is not true that at the time of the filing of bankrupt's petition herein, on the date of the adjudication in bankruptcy of the bankrupt herein or at any time during the six months' period immediately succeeding the adjudication of the bankrupt herein, or at any of said times the bankrupt had any property interest as the beneficiary or otherwise in Trust No. 245, the First National Bank of Santa Ana, California, Trustee, which he, the bankrupt, could have by any means transferred, or which pass by operation of law to [146] Trustee in bankruptcy.

II.

The Court finds that there was a Trust created by W. A. Huff and Edith Huff during their lifetime with the First National Bank of Santa Ana, as Trustee, known as Trust No. 245; that said Trust was a Spendthrift Trust with the absolute right in the donors or one of the donors on the death of the other to change and vary the terms thereof.

III.

The Court finds that the trustee in bankruptcy, on the date of the commencement of this proceeding, and for six months thereafter, did not acquire any right, title or interest as an asset in the within bankrupt estate in said trust, and the court further finds that, under the provisions of Section 70 (A) 5 of the Bankruptcy Act, the said interest of the bankrupt in said trust was not such property right as would be vested in the trustee.

From the foregoing findings of fact, the court makes the following conclusions of law:

I.

That the petition of the trustee for an order determining that the First National Bank of Santa Ana, California, and the bankrupt herein should be required to convey to the trustee in bankruptcy the bankrupt's alleged beneficial interest in said Trust No. 245 should be denied.

II.

The Court concludes that Harry Ashton, Trustee in bankruptcy herein is not the owner of the bankrupt's beneficial interest in Trust No. 245, or any proceeds which he may ultimately recover therefrom, either as an heir-at-law of Edith Huff or an ultimate beneficiary under the terms of the Trust No. 245, as created by W. A. Huff and Edith Huff, donors, with the First National Bank of Santa Ana, California, Trustee, known as Trust No. 245.

It Is Therefore Ordered as Follows:

That the petition of the Trustee for an order vacating [147] and setting aside the discharge of the bankrupt be and hereby is denied.

That the petition of Trustee, Harry Ashton, herein for an order determining that the bankrupt and the First National Bank of Santa Ana, California, have no interest in Trust No. 245, and that the same be conveyed to the Trustee, Harry Ashton, be, and hereby is denied, and the order to show cause issued on said petition is dismissed.

That the petition of the Trustee, Harry Ashton, seeking the determination, that he as Trustee in bankruptcy herein is entitled to the beneficial interest and any and all beneficial interests in bankruptcy in Trust No. 245, be and hereby is denied, and

It is determined, concluded and found that the estate of the bankrupt and the Trustee thereof, have no right, title or interest in said Trust No. 245 or any of the property thereof.

Dated this 24th day of January, 1944.

Hubert F. Laugharn

Referee in Bankruptcy

[Endorsed]: Filed Jan. 24, 1944, at Min. past o'clock M. Hubert F. Laugharn, Referee, M. E. Marsh, Clerk. W.

[Endorsed]: Filed Feb. 4 - 1944. [148]

[Title of District Court and Cause.]

PETITION FOR REVIEW.

Comes now Harry Ashton and petitions for a review of that certain order made in the above-entitled matter on the 24th day of January, 1944, a copy of which said order is hereto attached marked Exhibit "A," and made a part hereof on the following grounds, which are the *errs* in respect to said order:

(1) That the findings of fact contained in said order are not sustained by the evidence.

(2) That said order is contrary to law.

(3) That the court erred in failing to find that the said bankrupt wilfully and knowingly failed to include in his schedules in bankruptcy, a description of the property contained in the Huff trust.

(4) That the court erred in failing to find that the bankrupt was guilty of acts for which his discharge could have been denied at the time of the granting of the order of discharge.

(5) That the court erred in failing to revoke and set aside the bankrupt's discharge.

(6) That the court erred in failing to find that, on the date of the commencement of these proceedings, the bankrupt had an interest in said Trust No. 245 with the First National Bank of Santa Ana, California, which the bankrupt could have transferred. [149]

(7) The court erred in failing to find that the bankrupt, at the time of the commencement of these proceedings, could have transferred said interest in said trust, said transfer to become effective as of the date the trust became vested in the bankrupt.

(8) The court erred in failing to find that, by reason of the fact that the bankrupt could have transferred his

interest in said trust, effective as of the date of the vesting of said interest in the bankrupt and that, therefore, the bankrupt's said interest in said trust passed by operation of law to your petitioner as such trustee in bankruptcy.

(9) The court erred in finding that the omission by the bankrupt from his schedules in bankruptcy of a description of his interest in said trust was in good faith and was not knowingly and wrongfully done.

(10) The court erred in finding that the bankrupt in good faith relied upon the advice of his attorney in failing to describe his interest in said trust in his schedules in bankruptcy.

(11) The court erred in finding that the advice of the bankrupt's attorney, that the law did not require that the interest in said trust be described by the bankrupt in his said schedules, was given in good faith.

Wherefore, petitioner prays that a review be had of said order and that the same be reversed and that findings be made that, the bankrupt's interest in said trust passed by operation of law to your petitioner as such trustee in bankruptcy, and that the bankrupt's discharge be revoked and set aside, and for all further and proper relief.

Harry Ashton

Trustee in Bankruptcy, Petitioner

EARL E. MOSS & LOUIS LOMBARDI

By Earl E. Moss [150]

[Verified.]

[Endorsed]: Filed Jan. 28, 1944 at Min. past 10 o'clock A. M. Hubert F. Laugharn, Referee. M. E. Marsh, Clerk.

[Endorsed]: Filed Feb. 4 - 1944. [151]

[Title of District Court and Cause.]

REFEREE'S CERTIFICATE ON REVIEW.

To the Hon. Harry A. Hollzer, Judge of the United States District Court, for the Southern District of California:

I, Hubert F. Laugharn, Referee in Bankruptcy, to whom the above entitled matter has been referred, do hereby certify as follows:

That in the within proceeding the bankrupt filed a voluntary petition in bankruptcy and was adjudicated on October 16, 1942. Thereafter, in the administration, Harry Ashton was appointed trustee for the said estate. On December 9, 1942 an order was made granting said bankrupt a discharge.

Thereafter and on October 7, 1943, the said trustee filed petitions for order to show cause and orders to show cause were issued thereon requiring the bankrupt:

(1) To show cause why his order of discharge should not be revoked.

(2) To show cause why Harry Ashton, as trustee for the within estate, should not be entitled, as an asset of the within estate, to a certain interest in a trust designated as No. 245.

On January 24, 1944 I made Findings of Fact. Conclusions of Law and Order denying both of the petitions of the trustee. Thereafter, and on January 28, 1944, the said trustee filed herein his Petition for Review of the order denying both petitions.

At the conclusion of the hearing I prepared an "Order" in the form of an opinion, setting forth my views of the matter in controversy [152] and requested that findings and order be prepared by counsel for the bankrupt in accordance therewith. Thereafter, findings and order were prepared by respective counsel and Findings and Order were signed and filed as aforesaid on January 28, 1944.

I determined that the interest of the bankrupt was not an asset of the bankrupt estate at the date of the adjudication herein and did not become an asset under the provisions of Section 70a (7 and 8) within six months of the date of adjudication. I further determined that the interest of the bankrupt, such as it was, and regardless of the above considerations, should have been set forth and scheduled by the bankrupt in Schedule B-4, "Property in reversion, remainder or expectancy, including property held in trust for the Debtor or subject to any power or right to dispose of or to charge." However, I made the further determination that the bankrupt had submitted all of the facts to his attorney in the within proceedings and the attorney prepared a brief and advised the bankrupt that the said interest was not an asset and that therefore it need not be scheduled; and I concluded therefrom that the bankrupt was not guilty of any bad faith or concealment of assets or of intentionally making a false oath, and that therefore an order should not be made revoking the discharge of the bankrupt.

The facts pertaining to the within controversy are not in dispute and are extensively set forth in the Opinion and in the Findings of Fact, the respective counsel herein differing as to the application of the law thereto.

The following documents are attached hereto:

1. Petition for Order to Show Cause.
2. Order to Show Cause.
3. Petition for Order Revoking Discharge.
4. Order to Show Cause.
5. Answer of Bankrupt, Charles Ralph Sentney, to Petition for Order to Show Cause for Turn Over Proceedings and Bankrupt's Return to Order to Show Cause Granted thereon on October 7, 1943.
6. Answer of Bankrupt, Charles Ralph Sentney, to Trustee's Petition for an Order Revoking the Discharge and Bankrupt's Return to the Order to Show Cause issued October 7, 1943, thereon. [153]
7. Brief of Bankrupt.
8. Trustee's Opening Brief.
9. Bankrupt's Reply Brief.
10. Trustee's Reply Brief.
11. Order (Opinion).
12. Findings of Fact, Conclusions of Law and Order.
13. Petition for Review.
14. Reporter's Transcript of first examination of bankrupt, held November 4, 1942.
15. Reporter's Transcript of Order to Show Cause Proceedings, October 13, 1943.
16. Trustee's Exhibit No. 1.
17. Trustee's Exhibit No. 2.

Dated: February 4, 1944.

Respectfully submitted,

Hubert L. Laugharn

HUBERT F. LAUGHARN,

Referee in Bankruptcy.

[Endorsed]: Filed Feb. 4 - 1944. [154]

In Bankruptcy—No. 41,495-H.

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION.

In the Matter of

CHARLES RALPH SENTNEY,

Bankrupt.

ORDER AFFIRMING THE ORDERS OF THE REFEREE (1) DENYING TRUSTEE'S MOTION TO VACATE DISCHARGE OF BANKRUPT; and (2) DENYING TRUSTEE'S PETITION FOR TURNOVER ORDER AND DISMISSING ORDER TO SHOW CAUSE WITH RESPECT THERETO.

The trustee in bankruptcy herein, Harry Ashton, having filed his respective petitions for review, the first one being a petition to review the order of referee in bankruptcy, Hubert Laugharn, denying the motion of the trustee in bankruptcy to vacate and set aside the bankrupt's discharge; and second, the trustee's review of an order of referee in bankruptcy, Hubert Laugharn denying the application of the trustee for an order requiring the bankrupt and the First National Bank of Santa Ana, California, to turn over certain property, and the dismissal of the order to show cause with regard thereto.

The respective parties to this proceeding appearing, the trustee in bankruptcy by his counsel, Earl E. Moss and Louis Lombardi, and the bankrupt appearing by his counsel, Rupert B. Turnbull and Martin Goldman, and written briefs having been filed by the respective parties and the Court having listened to oral arguments in addition thereto, now therefore,

It Is Hereby Ordered, Adjudged and Decreed:

1) That the order of the referee sought to be reviewed denying the motion of Harry Ashton, Trustee herein, to vacate and set aside the order of the bankrupt's discharge be and hereby is affirmed and the [155] review of said order sought by the trustee be and the same is hereby denied.

2) That the order of the referee denying the application of the trustee in bankruptcy, Harry Ashton, for an order requiring the bankrupt, Charles Ralph Sentney, and the First National Bank of Santa Ana, California, to turn over property to Harry Ashton, trustee in bankruptcy, be and the same is hereby confirmed and approved and the order dismissing the order to show cause in regard thereto be and the same is hereby confirmed and approved; the review of the trustee in bankruptcy from said orders be and each of them hereby is denied.

Done in open Court this 29 day of March, 1944.

H. A. Hollzer

United States District Judge

Approved as to form:

Rupert B. Turnbull

Attorney for Bankrupt

Earl E. Moss & Louis Lombardi

By Earl E. Moss

Attorneys for Trustee in Bankruptcy,

Harry Ashton

Judgment entered Mar. 29, 1944. Docketed Mar. 29, 1944. C. O. Book 24, Page 309. Edmund L. Smith, Clerk. By L. Wayne Thomas, Deputy.

[Endorsed]: Filed Mar. 29, 1944. [156]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO THE CIRCUIT COURT
OF APPEALS.

Notice is hereby given that Harry Ashton, as Trustee in Bankruptcy in the above entitled matter, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the Order Affirming the Orders of the Referee (1) Denying Trustee's Motion to Vacate Discharge of Bankrupt; and (2) Denying Trustee's Petition for Turnover Order and Dismissing Order to Show Cause With Respect Thereto, entered in this proceeding on the 29th day of March, 1944 in Civil Order Book No. 24 at Page 309 in the office of the Clerk of said Court.

Dated: April 20th, 1944.

Earl E. Moss and Louis Lombardi

By Earl E. Moss,

Attorneys for Appellant.

[Endorsed]: Filed Apr. 20, 1944. [157]

[Title of District Court and Cause.]

DESIGNATION OF PORTION OF RECORD AND
STATEMENT OF POINTS.

Now comes appellant in the above entitled matter and herewith designates the following as those portions of the record and proceedings herein which he deems should be contained in the record on appeal in this cause to the United States Circuit Court of Appeals for the Ninth Circuit.

1. Trustee's Petition for an Order revoking discharge of Bankrupt.

2. Petition of Trustee for Order to Show Cause why the petitioning Trustee is not the owner of the Bankrupt's beneficial interest in Trust No. 245.

3. Answer of Bankrupt to petition for order revoking discharge.

4. Answer of Bankrupt to petition for Order to Show Cause Re ownership of beneficial interest in Trust No. 245.

5. Order of Referee denying petition for an order vacat- [158] ing Bankrupt's discharge and order denying that Trustee is entitled to the beneficial interest of Bankrupt in Trust No. 245, together with findings of fact and conclusions of law of Referee respecting the two foregoing orders.

6. Petition of Trustee for review of the foregoing orders of Referee.

7. Order of District Judge affirming the foregoing orders of Referee which Order of the District Judge was entered in the office of the Clerk of said Court on March 29th, 1944, in Civil Order Book No. 29 at Page 309.

8. All exhibits offered and received in evidence at hearing before the Referee on Trustee's petition for or-

der revoking Bankrupt's discharge and the hearing on order to show cause Re beneficial interest in Trust No. 245.

9. Testimony of Charles Ralph Sentney, Bankrupt and of Martin Goldman taken by Kate W. Lieden, Reporter at hearings before Referee on Trustee's petition for order revoking discharge and testimony of said witnesses at hearing before Referee on Trustee's petition for order to show cause Re beneficial interest in Trust No. 245.

10. Notice of Appeal.

11. This Designation of Portion of Record and Statement of points.

POINTS UPON WHICH APPELLANT INTENDS TO RELY ON APPEAL.

1. The District Judge erred in adopting and approving Conclusion Number I of the findings of fact and conclusions of law in the proceeding to revoke the discharge of the Bankrupt wherein the Referee concluded that on the date of the commencement of the bankruptcy proceedings and for six months thereafter, the Bankrupt had no property interest in Trust No. 245 with the First National [159] Bank of Santa Ana, California, which the Bankrupt could by any means have transferred and that there was no property in said trust which could or did pass by operation of law to the Trustee in Bankruptcy.

2. The District Judge erred in failing to find that on the date of the commencement of the proceedings in Bankruptcy, the Bankrupt's interest in said Trust No. 245 with the First National Bank of Santa Ana, California, was property which the Bankrupt could by any means have transferred.

3. That the District Judge erred in adopting conclusion Number III of the Findings of Fact and Conclusions of Law of the Referee, wherein the Referee concluded that the Bankrupt was not guilty of any bad faith or concealment of assets or knowingly or intentionally making a false oath.

4. That the District Judge erred in failing to find that the Bankrupt was guilty of bad faith and was guilty of knowingly and intentionally making a false oath.

5. That the District Judge erred in failing to find that the advice of the Bankrupt's counsel on which the Bankrupt relied in stating in Schedule B-4 that he had no property in expectancy and no property held in trust for him, was contrary to the law and that said advice was given knowingly and intentionally and in bad faith.

6. That the District Judge erred in adopting conclusion IV of the Findings of Fact and Conclusions of Law of the Referee in the proceeding to revoke the discharge of the Bankrupt where the Referee concluded that the petition for an order revoking the discharge of the Bankrupt should be denied.

7. That the District Judge erred in refusing to make an order revoking the discharge of the Bankrupt.

8. That the District Judge erred in adopting and approving finding Number I made by the Referee in the Findings of Fact and [160] conclusions of law on the proceeding for an order declaring the Trustee to be the owner of a beneficial interest in said Trust No. 245 with the First National Bank of Santa Ana, California, in which finding the Referee held that on the date of the commencement of the bankruptcy proceedings the bankrupt had no interest in said Trust No. 245, which he could by any means have transferred or have passed by operation of law to the Trustee in Bankruptcy.

9. That the District Judge erred in finding that on the date of the commencement of the Bankruptcy proceedings the Bankrupt had an interest in said Trust No. 245, which he could by any means have transferred and have passed by operation of law to the Trustee in Bankruptcy.

10. That the District Judge erred in adopting finding Number III made by the Referee in Bankruptcy at the proceeding to declare the Trustee in Bankruptcy the owner of the said interest in Trust Number 245 in which finding the Referee found that on the date of the commencement of this proceeding and for six months thereafter, the Bankrupt had no interest in said Trust No. 245, which passed by law to the Trustee in Bankruptcy.

11. That the District Judge erred in adopting and approving Conclusion number I made by the Referee in Bankruptcy in the Findings of Fact and Conclusions of Law on the proceeding to declare the Trustee in Bankruptcy the owner of the said Trust Number 245, in which Conclusion the Referee concluded that the petition of the Trustee for an order requiring said First National Bank of Santa Ana, California and the Bankrupt to convey to the Trustee in Bankruptcy the Bankrupt's interest in said Trust No. 245, should be denied.

12. That the District Judge erred in failing to conclude that the said petition of the Trustee in Bankruptcy for an order requiring the said First National Bank of Santa Ana, California, and the said Bankrupt to convey to the Trustee in Bankruptcy his [161] interest in said Trust No. 245, should be granted.

13. The District Judge erred in adopting Conclusion Number II by the Referee in Bankruptcy in the findings of fact and conclusions of law in the proceeding to de-

clare the Trustee in Bankruptcy the owner of said interest in said Trust No. 245, in which Conclusion the Referee concluded that the Trustee in Bankruptcy was not the owner of any interest in the said Trust No. 245 or any of the proceeds thereof.

14. That the District Judge erred in failing to conclude that the Trustee in Bankruptcy was the owner of the Bankrupt's interest in said Trust No. 245 and the proceeds thereof.

15. That the District Judge erred in adopting the Order of the Referee in Bankruptcy made in the two proceedings, to-wit: The proceeding to revoke the Bankrupt's discharge and the proceeding to declare the Trustee in Bankruptcy the owner of the Bankrupt's interest in said Trust No. 245, in which order the said Referee denied the petition of the Trustee in Bankruptcy for an order setting aside and revoking the discharge of the Bankrupt, and denied the petition of the Trustee for an Order that he was the owner of the Bankrupt's interest in said Trust No. 245.

16. That the District Judge erred in refusing to order that the discharge of the Bankrupt be set aside and revoked and in refusing to Order that the Trustee in Bankruptcy is the owner of said interest in said Trust Number 245 and in refusing to order that the said First National Bank of Santa Ana, California, and the said Bankrupt convey said interest in said Trust Number 245 to the Trustee in Bankruptcy.

Dated: April 20th, 1944.

EARL E. MOSS and LOUIS LOMBARDI,

By Louis Lombardi

Attorneys for Appellants.

[Endorsed]: Filed Apr. 20, 1944. [162]

[Title of District Court and Cause.]

SUPPLEMENTARY DESIGNATION.

Now comes appellant in the above entitled matter and files this his supplementary designation of portions of the record which should be contained in the record on appeal of said cause to the United States Court of Appeals for the Ninth Circuit, and makes the following additional designations:

1. Debtor's petition, filed October 16, 1942.
2. Adjudication of Bankrupt.
3. Order of Reference.

Dated this 11th day of May, 1944.

EARL E. MOSS and LOUIS LOMBARDI.

By Louis Lombardi.

[Endorsed]: Filed May 12, 1944. [163]

[Title of District Court and Cause.]

ADMISSION OF SERVICE OF DESIGNATION
OF PORTIONS OF RECORD AND STATE-
MENT OF POINTS AND SUPPLEMENTARY
DESIGNATION.

Service of Appellant's Designation of Portions of Record and *State* of Points and Supplementary Designation admitted this 18 day of May, 1944.

Rupert B. Turnbull

Attorney for Respondent.

[Endorsed]: Filed May 18, 1944. [164]

[Title of District Court and Cause.]

ORDER.

It appearing from the affidavit of Earl E. Moss, one of the attorneys for the Appellant in the above entitled matter that it is necessary that the time be extended for docketing the appeal in the office of the Clerk of the Circuit Court of Appeals of the Ninth Circuit,

It Is Therefore Ordered that the time for docketing said appeal be and is hereby extended to and including the 10th day of June, 1944.

Dated May 25, 1944.

H. A. Hollzer
Judge

[Endorsed]: Filed May 25, 1944. [165]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK.

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 165 inclusive contain full, true and correct copies of: Debtor's Petition in Bankruptcy; Order of Adjudication and of General Reference; Petition for Order Revoking Discharge; Petition for Order to Show Cause; Answer of Bankrupt to Trustee's Petition for an Order Revoking the Discharge and Bankrupt's Return to the Order to Show Cause Issued October 7, 1943, Thereon; Answer of Bankrupt to Petition for Order to Show Cause for Turnover Proceedings and Bankrupt's Return to Order to Show Cause Granted Thereon on October 7, 1943; Trustee's Exhibits 1 and 2; Order of Referee Dated December 6, 1943; Findings of Fact and Conclusions of Law and Order; Petition for Review; Referee's Certificate on Review; Order Affirming the Orders of the Referee (1) Denying Trustee's Motion to Vacate Discharge of Bankrupt; and (2) Denying Trustee's Petition for Turnover Order and Dismissing Order to Show Cause with Respect Thereto; Notice of Appeal; Designation of Portion of Record and Statement of Points; Supplementary Designation; Admission of Service of Designation, etc.; and Order, which, together with one volume of Reporter's Transcript transmitted herewith, constitute the rec-

ord on appeal to the Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$40.25 which sum has been paid to me by Appellant.

Witness my hand and the seal of said District Court this 7 day of June, 1944.

[Seal]

EDMUND L. SMITH, Clerk

By Theodore Hocke

Deputy Clerk

In the District Court of the United States,
Southern District of California.

Central Division

Before: Honorable Hubert F. Laughran, Referee in
BANKRUPTCY.
In Bankruptcy
No. 41,495-H

IN THE MATTER OF

CHARLES RALPH SENTNEY.

A BANKRUPT.

Reporter's Transcript of Proceedings Had and Taken in
the Above Entitled Matter, on October 13, 1943.

Appearances:

Earl E. Moss, Esq.,

841 So. Serrano—DR. 3111

Los Angeles, California

and

Louis Lombardi, Esq.,

528 Associated Realty Bldg.—TR. 3051

Los Angeles, California.

For the Trustee, Harry Ashton, Esq.

Rupert B. Turnbull, Esq.,

400 Title Insurance Bldg.—MU. 6312

Los Angeles, California

and

Martin Goldman, Esq.,

9000 Sunset Blvd—BR. 2-4038

Los Angeles, California,

For the Bankrupt, Charles Ralph Sentney.

A. M. Bradley, Esq.,

Santa Ana, California,

For the First National Bank of Santa Ana.

Charles Ralph Sentney

October 13, 1943.

Order to Show Cause re Discharge
Order to Show Cause re a Certain Trust.

The Referee: Charles Ralph Sentney.

Mr. Moss: The Trustee is ready.

Mr. Goldman: If the Court please, I want to associate Judge Turnbull as associate counsel for the bankrupt.

The Referee: Who is appearing on behalf of the Trustee?

Mr. Moss: Myself and Mr. Lombardi.

The Referee: And this is the Trustee's order to show cause?

Mr. Moss: There are two: I was just wondering whether it wouldn't be well to consolidate them. I imagine much of the testimony would apply to both. There is a petition for an order revoking the discharge and a petition for an order adjudging the trustee to be the owner of a certain trust.

Mr. Turnbull: We will object to the consolidation, because different rules of the burden of proof apply, but we will stipulate the evidence can be used in the two proceedings without re-introducing it. In one proceeding the evidence would have to show criminal intent and in the other it would not, but I don't believe we should have to put the two evidences in separately. Can we have a stipulation on that?

Mr. Moss: The stipulation that the evidence may apply to each is satisfactory.

Mr. Turnbull: So accepted. [2*]

*Page number appearing at foot of Reporter's Transcript.

Mr. Bradley: I appear on behalf of the First National Bank of Santa Ana, in response to an order to show cause.

The Referee: It would seem to follow that attention should first be given to the turnover order and if that is not supported then it would seem to follow that the other would fall without further contention.

Mr. Moss: I would not like Your Honor to have any idea that that is the law, because there is ample authority to the effect that it was the duty of the bankrupt to schedule this asset, irrespective of the fact that the Trustee might not recover it, and there is also ample authority to the effect that any fraud or any fact which would have entitled the Trustee to have an order made denying the bankrupt's discharge is sufficient to revoke his discharge, so then if it is true that the Trustee would not be entitled to this, still it was the duty of the bankrupt to schedule it, and by reason of his failure to schedule it we are entitled to have his discharge revoked. I will submit my authorities later.

Mr. Turnbull: Would it make it any easier for Your Honor if we state our position? We have filed the returns.

The Referee: I am just going through them now. My remarks may be qualified with the thought Mr. Moss has given. I have no pre-conceived idea about it.

Mr. Moss: I have no objection to proceeding with the turnover order first. With counsel's stipulation I think [3] we can go right ahead.

Mr. Moss: Will you take the stand, Mr. Sentney?

Mr. Turnbull: I asked the Court if it would make any difference if we stated our positions.

The Referee: I think you might as well let the Trustee put on his case.

CHARLES RALPH SENTNEY

having been first duly sworn, on oath testified as follows:

Direct Examination

By Mr. Moss:

Q. You are the bankrupt in this proceeding, Charles Ralph Sentney? A. I am.

Q. Did you know W. A. Huff and Edith Huff in their lifetime? A. I did.

Q. Were they any relation to you?

A. She was my aunt and he was her husband—aunt and uncle.

Q. Where did they reside? A. At Santa Ana.

Q. California? A. Yes.

Q. How long have you resided in California?

A. Since about 1922 or '23, maybe a little earlier than that, 1921. [4]

Q. When you first came to California did you have occasion to call upon Mr. and Mrs. Huff?

A. Yes sir.

Q. Where did you reside in California at that time?

A. At the Stanford University.

Q. How long did you reside there?

A. One term; that is one year.

Q. Then where did you go to reside?

A. Los Angeles.

Q. How long did you continue to reside in Los Angeles?

A. Ever since. Well, I—there was a time I was in Santa Barbara, maybe four or five months.

Q. In other words, since about 1924 you have continued to reside in Los Angeles? A. That's right.

(Testimony of Charles Ralph Sentney.)

Q. What time did W. A.—what was the date of the death of W. A. Huff?

A. It was in 1927, I think October, might have been November, 1927.

Q. What was the date of the death of Edith Huff?

A. April 20, 1943.

Q. Now from 1924 on, how frequently did you see W. A. Huff and Edith Huff?

A. Well, I would say on an average of once a month during his lifetime. I saw her oftener than that afterwards.

Q. Did you say W. A. Huff died in 1927? [5]

A. I believe that is the date, yes sir.

Q. What part of the year 1927 did he die?

A. In the latter part; I am not sure of the year, could have been 1927 or 1928, but I believe it was in October.

Q. October of 1927? Are you familiar with the trust that he created and Mrs. Huff created, with the First National Bank of Santa Ana, on May 10, 1927?

A. I am familiar with the one he had created at the time of his death.

Q. When did you first learn he had created that trust?

A. After his death. Well, I knew there was one but I didn't know what it was.

Q. When did you first learn there was a trust?

A. During his illness.

Q. His last illness? A. Yes sir.

Q. Did you learn more of the details after his death?

A. Yes sir.

Q. How long after his death?

A. Well, very shortly. I would say within thirty days.

Q. What did you learn then?

(Testimony of Charles Ralph Sentney.)

A. I learned that there was a trust created by his wife and himself in connection with the property they had, and in order to have the property managed for her and in order to distribute the income to her and to heirs on his side of the family. [6]

Q. How did you secure that information?

A. She gave it to me.

Q. She gave you a copy of the trust?

A. I saw a copy of the trust. She showed it to me.

Q. And you read it over at that time?

A. Yes sir.

Q. Did you take a copy away with you?

A. I had one for some time, to familiarize myself with it, there had been some changes—

Q. Well,—

Mr. Turnbull: He didn't finish his answer.

A. —As I said, there had been numerous changes and it took time to go over it and see what was in effect at that time in the way of amendments that were made since they created it; there were several amendments.

Q. When was it you studied it over?

A. Within the first thirty days after his death.

Q. Now, then, from that time on, how often did you have occasion to see Mrs. Huff?

A. Very often. I would say during the past ten or twelve years on an average of six months in the year I was seeing her daily.

Q. Where were you living at that time?

A. At which time?

Q. The time immediately following his death up to the time of her death. [7]

(Testimony of Charles Ralph Sentney.)

A. I lived several places. At the time of her death I was living next door to her.

Q. How long had you lived there?

A. About ten or twelve years.

Q. Where was she living at that time?

A. 8855 St. Ives Drive, Los Angeles.

Q. And she had lived there for about twelve years?

A. Off and on, except when she went to Balboa. She had a home in Balboa and I didn't see her when she went there.

Q. And you had lived in your residence for twelve years?

A. Yes, sir.

Q. And you saw her practically every day?

A. When she was in Los Angeles, yes sir.

Q. Did she consult you concerning her property matters?

A. In many instances, yes sir.

Q. Did you testify in your first examination here that you were employed by someone concerning property, advising?

A. Not employed, no. Not to my knowledge.

Q. Didn't you testify you were advising some lady about her property matters?

Mr. Turnbull: That is objected to as no foundation laid for such impeachment. The gentleman is entitled to look at the transcript of his testimony before he testifies.

The Referee: Overruled. If the exact testimony becomes necessary we will have to have access to that; this will just test his memory. [8]

By Mr. Moss:

Q. It is my recollection that you made some reference to some one whom you were advising concerning property matters.

A. Adelaide Ross.

(Testimony of Charles Ralph Sentney.)

Q. That was not Mrs. Huff?

A. No. I was employed by Adelaide Ross to manage her property for her. She owns a lot of property in the district I am in.

The Referee: I recall your reference to that. I don't recall anything being mentioned about Mrs. Huff.

Witness: I was never paid by Mrs. Huff for anything. It was just a matter by way of advice. If she had anything in her mind regarding her income she might have asked me about it, or she might not have.

By Mr. Moss:

Q. You were familiar with the various changes in the trust that she made from time to time?

A. No; some of them I was. There were some I apparently didn't know about.

Q. Were you ever consulted concerning the price at which any of the property in the trust should be sold?

A. Subsequent to her death?

Q. At any time.

A. I don't think she could sell any during her life. Subsequent to her death, yes sir, I was asked about it, as [9] to what I thought the values were, and what they should be.

Q. That was only subsequent to her death?

A. Well, there was one time when she wanted to dispose of her house up here. She thought she might want to go back to Santa Ana, and we discussed what the house could be sold for and what a house could be bought for in Santa Ana, but it was just a matter of discussion.

Q. Now when you filed your petition in bankruptcy—prior to filing it, you took a copy of this trust to your attorney, did you?

(Testimony of Charles Ralph Sentney.)

A. I discussed the matter with him, yes sir.

Q. You took a copy of the trust and you discussed its effect?

The Referee: Just one moment—will you split that question up?

Mr. Turnbull: We will stipulate—

The Referee: Just a moment; just read the question.

By Mr. Moss:

Q. You took a copy of the trust to your attorney's office?

A. Well, I think I discussed it with him at the time I went in there; as a matter of fact I know I did.

Q. What did you tell him?

A. I told him I knew at one time, when the trust was created, I had been mentioned in the trust. I said I knew I couldn't do anything with the interest I had, and didn't [10] know whether I had it at that time, but I had no way of knowing.

Q. Is that all you told him?

A. Well, I don't at this time remember any other discussion about it.

Q. Is there any way by which you could refresh your recollection?

A. No, I don't know of any at the moment.

Q. In other words, as far as you now remember, and you have no other means of refreshing your recollection, you have told us everything you told Mr. Goldman at the time you first discussed the matter with him?

A. Regarding this trust?

Mr. Turnbull: Limit your question to a particular time.

(Testimony of Charles Ralph Sentney.)

Q. Yes sir, I want to know about the first time you discussed your matters with Mr. Goldman.

A. Is it in connection with the bankruptcy, you mean?

Q. Yes sir.

A. I had an opportunity at one other time to discuss the trust with him, but not my interest.

Q. You mean prior to the bankruptcy proceeding?

A. Yes; but it had no connection with me; it was in connection with a matter of income division on one member of my uncle's portion of the family. I discussed it with him then, and at that time I took the copy that my aunt had to him and went over it with him, but you were asking me in [11] connection with the time I discussed this with him—

Q. When was that?

A. Oh, I would say possibly a year or eighteen months previous to the time I filed bankruptcy.

Q. How did you happen to be active in that matter?

A. Well, because one of the interested parties, I don't know what you would call them, on my uncle's side, had died. There was a division of this income between his heirs and my aunt, and one of those heirs died and there was a question in her mind as to whether or not she had a right to the income of that person who had died as long as she lived, instead of his heirs having it divided among them, and I discussed it with him and we subsequently arrived at an agreement with the heirs on his side of the family regarding the income of that one person that was deceased.

Q. And in that matter you were representing Mrs. Huff?

(Testimony of Charles Ralph Sentney.)

A. Yes; she was not well at the time.

Q. Did you represent her in any other matters concerning the trust?

A. Income matters, several times, yes sir.

Q. Did you have occasion to discuss the matter of the trust with the trust officers of the First National Bank of Santa Ana frequently?

A. Yes sir, I have discussed it with them. In connection with income only. That was one place I had gone for her.

Q. Now going back to the first occasion that you dis-
[12] cussed your bankruptcy with Mr. Goldman, have you told us all that you told him about the trust matter?

A. As near as I can remember, yes. I described what the provision was as I understood it.

Q. Did he then proceed to prepare your schedules in bankruptcy? A. That's right.

Q. And you signed, filed and swore to the schedules that are on file in their present form? A. I did.

Q. Did you have any other discussion of the trust with Mr. Goldman before you signed and filed them?

A. My attorney told me I had no interest in this Huff trust, number 245; that I had no interest at all in it.

Q. At that time did he have a copy of the trust?

A. Well, as I remember it—

Q. What I am anxious to know is this—

Mr. Turnbull: He is entitled to answer the question.

Mr. Moss: I will withdraw the question.

(Testimony of Charles Ralph Sentney.)

By Mr. Moss:

Q. What I would like to know is this: If Mr. Goldman didn't have a copy of that trust before him, how could he be so positive?

Mr. Turnbull: Object to that; this witness has heretofore said that he had given Mr. Goldman a copy of that trust before. [13]

The Referee: I will overrule the objection. The question is somewhat argumentative but I think it should be permitted. Ask it again.

By Mr. Moss: I will withdraw that question.

Q. At the time that you had the discussion with Mr. Goldman and he rendered you the opinion that you had no interest that should be mentioned in your schedules, didn't you have a copy of the trust there?

A. I don't believe I did, but I know at the time I had taken the matter up previously with him in connection with this income thing and I believe Mr. Goldman made a copy of it at that time, but I didn't take one to him at that time.

Q. Well did he, at that time of preparing your petition in bankruptcy, and at the time you were discussing the matter did he bring out the copy and discuss it with you?

A. I don't remember that. I would be inclined to say that he did, but I don't know. I asked him for an opinion and he rendered an opinion on it.

Q. Did you have any further discussion after the filing of your petition? A. Not to my knowledge.

(Testimony of Charles Ralph Sentney.)

Q. Did you at any later time discuss the matter of whether or not a reference to the trust should have been included in your petition with Mr. Goldman? [14]

A. Not until this matter came up.

Q. Did Mrs. Huff have a copy of the trust at her house? A. Yes sir.

Q. Did she frequently bring it out to discuss it with you? A. No.

Q. Did you ever look over the copy of the trust she had at her house? A. Yes.

Q. When was the last time, prior to her death, that you looked it over?

A. I think it was the time I took it over to Mr. Goldman on this income matter.

Q. That was about eighteen months before you filed your petition in bankruptcy?

A. I believe it was about that.

Q. And you read over the trust at that time?

A. No, I didn't. It is a pretty long instrument.

Q. You knew the provisions it contained concerning yourself?

A. I knew the original provisions it contained concerning myself.

Q. At the time you took it over to Mr. Goldman you then learned of the provisions it contained then about yourself?

A. As far as the copy was concerned, but I don't know that there were any new provisions on the one she had.

Mr. Moss: That is all. [15]

(Testimony of Charles Ralph Sentney.)

Cross-Examination

By Mr. Turnbull:

Q. This trust that you refer to, there is only one trust under this number, as far as you know?

A. As far as I know, yes.

Q. You have referred several times to the condition that the trust was in at certain times. Have you learned since that during her lifetime Mrs. Huff made amendments to the trust and filed them in the office of the First National Bank of Santa Ana, as trustee?

A. That is right.

Q. Have you at any time since the creation of this trust in 1927 received any money from it?

A. No sir.

Q. Have you received any property from it?

A. No sir.

Q. Have you received any benefits of any kind from it?

A. No sir.

Q. At the time of the filing of your bankruptcy, Mrs. Huff was a living person?

A. That is right.

Q. During all of the times you were before this court in the bankruptcy proceedings and for fully six months after your adjudication, she was a living person?

A. That is correct.

Q. Were you familiar, at the time you filed your bank- [16] ruptcy schedules of the recital in the trust that no person other than Mrs. Huff could alienate or anticipate or do anything with the property, the subject matter of the trust?

A. That is right.

(Testimony of Charles Ralph Sentney.)

Q. You knew that? A. Yes sir.

Q. Were you familiar, also, with the recital in the original trust that no conveyance could be made?

Mr. Moss: I will stipulate he is familiar with the entire contents.

Mr. Turnbull: That is enough from this witness.

Mr. Moss: At the time of the filing of the petition in bankruptcy he was familiar with the entire contents of the trust.

Mr. Turnbull: I will stipulate he knew about the original trust, but I am going to prove he didn't know about certain amendments which cut him off.

The Referee: You had better ask the question.

By Mr. Turnbull: Q. You were familiar with the terms of the original trust of May 10, 1927, at the time of your bankruptcy? A. I was.

Q. After Mrs. Huff's death did you learn of any amendments that you were not familiar with at the time of the bankruptcy; any amendments to the trust?

A. Yes sir. [17]

Q. I think this morning when the trust officer showed you an amendment you said you had not known about that? A. That is right.

Mr. Turnbull: We will identify those later on in a different manner. That is all for the cross-examination of this witness. We will probably call him later on as our own witness in the defense.

By the Referee: Q. Mr. Sentney, did you receive any loans or advances or gifts from Mr. and Mrs. Huff during their life?

A. Oh, I have had gifts from them, yes sir.

(Testimony of Charles Ralph Sentney.)

Q. Of what size and what character?

A. Oh, I don't know—over that period of time there were—

Q. Did you receive any from Mrs. Huff after Mr. Huff's death?

A. Nothing that was—nothing out of the ordinary gifts from her.

Q. Did you receive any advances against your interest in the trust? A. No sir.

Q. You didn't receive any prepayment or anything to go against your— A. No sir.

Redirect Examination

By Mr. Moss:

Q. You knew at the time you filed your petition [18] in bankruptcy that upon the death of Mrs. Huff you would be entitled to receive some of the residuum—some of the corpus of the trust?

Mr. Turnbull: That is an attempt to vary the terms of the instrument. That written instrument is an express trust under the California Code, and it cannot be varied by oral evidence. Either he gets it or he doesn't get it. We will have to test the sufficiency of that document under the law. It is not my idea or the witness' idea of it.

The Referee: Yes, I think that should be sustained. Possibly he was going to get something, but what he knew is another point. I will sustain that.

Mr. Moss: No further questions.

The Referee: That is all, Mr. Sentney.

(Witness excused.)

Mr. Moss: Is the trust officer of the bank here?

L. S. MORTENSON

having been first duly sworn, on oath testified as follows:

Direct Examination

By Mr. Moss:

Q. What is your business, Mr. Mortenson?

A. Trust officer of the First National Bank of Santa Ana.

Q. And as such trust officer are you familiar with a certain Declaration of Trust, known as Trust No. 245 of the First National Bank of Santa Ana?

A. Yes sir. [19]

Q. How long have you been such a trust officer?

A. Eight years.

Q. Were you acquainted with Edith Huff during her lifetime?

A. Just slightly; she called in very seldom.

Q. Since you have been such trust officer have you been familiar with this trust? A. Yes sir.

Mr. Moss: I took the copy that Mr. Goldman loaned me and I had a copy made.

Mr. Turnbull: We have an exact carbon copy that we will offer you, if you want to substitute it.

Mr. Moss: All right.

(Mr. Turnbull hands document to Mr. Moss.)

Mr. Turnbull: I prefer to use the one we know is a carbon.

Mr. Moss: All right

Mr Turnbull Do you want the amendments also?

Mr. Moss: I think probably the complete trust, at least to the date of filing the petition in bankruptcy.

Mr. Turnbull: I have handed counsel what we understand is one of the carbon copies of the original, without signatures however, in certain instances.

(Testimony of L. S. Mortenson.)

Mr. Moss: Well, accepting counsel's statement that this is a correct copy, I offer it in evidence.

The Referee: All right.

[Trustee's Exhibit No. 1 will be found at the end of the testimony, p. 112.]

Mr. Turnbull: Will it be stipulated that the signatures, where they do not occur, did occur in the original?

Mr. Moss: If you say they did.

Mr. Turnbull: I don't know; I haven't seen it.

The Referee: We will take a short recess, and you may check it.

Mr. Moss: Or the witness might have it.

The Referee: You can check it during the recess.

Mr. Turnbull: For the purpose of informing parties and counsel, I understand that does not contain the balance of the amendments.

Mr. Goldman: I think it does. (To the witness) Did I get all of the amendments after Mrs. Huff's death?

Witness: That is my understanding.

Mr. Moss: Would you take a look at that, Mr. Mortenson?

Witness: (Looking at instrument) Yes sir, although it is rather difficult to compare them with these amendments; all of these are amendments—eight amendments.

Mr. Turnbull: There are eight amendments to the trust?

Witness: Yes sir; some of which amendments were revoked in their entirety; others are now effective.

Mr. Moss: It was my purpose when I had my copy made, to copy it completely, and I supposed this copy was more or less a complete copy with all of the amendments added to it.

(Testimony of L. S. Mortenson.)

Witness: We can compare and find out if all of the amendments are in there. [21]

The Referee: We will take a short recess, Mr. Mortenson, if you want to check that over, or you may do it later if you want to.

Mr. Moss: I would just as soon take a recess now and we will get this past us.

(Whereupon a recess was had.)

(The recess over L. S. MORTENSON resumes the stand.)

By Mr. Moss:

Q. After a comparison of the copy that was introduced in evidence, did you find that one amendment was not included?

A. That is correct; one amendment dated July 3, 1928.

Mr. Turnbull: Counsel, do you have it there?

Mr. Moss: No, I don't have it. While I don't know that it applies to this bankrupt's interest, yet I think we should have the trust complete.

Mr. Turnbull: I do too.

Mr. Moss: Will you, Mr. Witness, when you get back to your office, make and send me three copies, if you will please; one for the Trustee, one for myself, and one for my associate, and then one to be filed with the court as an exhibit?

Witness: Yes sir.

Mr. Bradley: Mr. Mortenson, would you make one for me?

Witness: Yes.

(Testimony of L. S. Mortenson.)

Mr. Moss: And mail those in and then I will ask permission to add that to the exhibit, or make it another exhibit [22] when it is received.

The Referee: Well, if it is agreeable, coming from the bank, I will just attach it.

Mr. Moss: Mail the copy to the court.

Mr. Turnbull: I will stipulate that if that is done it may be marked without further formality, to the exhibit.

The Referee: All right. If that is agreeable I will just clip it in.

Mr. Moss: I think that is all.

Cross-Examination

By Mr. Turnbull:

Q. Mr. Mortenson, after the death of Mrs. Huff did Mr. Goldman get a copy of this trust from you; a copy of the amendments, rather?

A. Yes; I think they had some of the amendments and possibly the original, but we attempted to complete their file, as I recall it.

Q. Does your record show that the bankrupt herein, Charles Ralph Sentney, ever received any money or anything of value from this trust?

A. Nothing whatever.

Q. This exhibit that is missing, you have the original here? A. Yes sir.

Q. Does that change the beneficiaries, generally?

A. Yes sir; the income beneficiaries on Mr. Huff's side [23] but it has no effect upon the interests of Mrs. Huff's part of the trust.

Q. These amendments which are offered in evidence and the one which will be in evidence, were made from time to time after the creation of the original trust?

(Testimony of L. S. Mortenson.)

A. Yes sir.

Q. Will you give us the dates of the amendments as executed by the grantors of the trust?

A. Yes sir. The first amendment was dated the 18th of February, 1927.

Q. Did that change any of the beneficiaries?

A. No; that had to do with the powers of the trust.

Q. Changed the powers of the trust?

A. Yes sir.

Q. The next one.

A. The next one is dated the 20th of October, 1928.

Q. Did that change any of the beneficiaries?

A. It didn't change the beneficiaries; it merely set up the fund for the purpose of caring for the burial place of Mr. and Mrs. Huff.

Q. It created different expenditures than the original trust of some of the money in the trust?

A. That is correct.

Q. The next one.

A. The 3rd day of July, 1928.

Q. And that trust made other changes in the distribution [24] of the property?

A. Yes sir; as to Mr. Huff's side, or part of the trust.

Q. In other words certain persons that were distributees there was changes made as to what should be given to them out of the trust?

A. Yes sir.

The Referee: That is the one we don't have?

Witness: Yes sir.

Mr. Ashton: We have that one.

(Testimony of L. S. Mortenson.)

Mr. Moss: Not that same one, I don't think.

Mr. Turnbull: That is the one he has to send in.

Witness: Yes sir.

By Mr. Turnbull:

Q. Now calling your attention to the amendment in 1938—

Mr. Lombardi: 19-what?

Mr. Turnbull: I said 1938.

Witness: 1928.

Mr. Turnbull: Oh, that is a "2" instead of a "3"?

Witness: Yes sir.

Mr. Turnbull: I misread it.

Mr. Lombardi: That is all right.

Q. The date of that amendment is actually the 3rd of July, 1928, and was signed at that time by both Mr. W. A. Huff, Mrs. Edith Huff, and by the trustee bank, First National Bank of Santa Ana, was it? It appears to be acknowledged on that same day by the parties. [25]

A. Yes sir.

Q. Now that amendment again changed the distribution of property in the event Ethel Huff not be survived by any issue of her body, didn't it?

A. That is right.

Q. It also changed, with respect to Helen Parke?

A. Yes sir.

Q. Also with respect to Ethel Huff, C. S. Huff and others; it made other changes in the trust, didn't it; other conditions?

A. It changed slightly in that—

Q. I don't care what the nature of them are, but I mean they did make different distribution?

(Testimony of L. S. Mortenson.)

A. Yes sir. (Indicating) That is reciting the original clause, here is the amended part of it, here.

Q. And it provided an income at the rate of \$250 per month to be given to S. E. Huff and other people?

A. Correct.

Q. And this amendment is a part of the trust we have heretofore referred to as No. 245?

A. That is correct.

Q. Each of these amendments you have told us about, from time to time were made after May 10, 1927, and were made by the grantors or donors of that trust, Mr. and Mrs. Huff?

A. Either one or the other, or both. [26]

Q. And have the signatures of the trustee, First National Bank of Santa Ana, amending the trust thereby?

A. Correct.

Mr. Moss: Could I see that one we found that was omitted?

(Witness hands instrument to Mr. Moss.)

Witness: That seems to be it, doesn't it?

By Mr. Moss:

Q. It is practically identical, isn't it?

A. Yes sir.

Mr. Moss: The copy that my office made from the copy Mr. Goldman submitted to me contains the amendment that seems to be omitted from the copy that counsel for the bankrupt submitted to us that we have offered in evidence.

(Testimony of L. S. Mortenson.)

Mr. Turnbull: Let's take it out and put it in then.

Mr. Moss: I am just wondering how that happened. Isn't this the same one?

Mr. Goldman: I don't know. Didn't you make a copy of mine?

Mr. Moss: Yes.

Mr. Goldman: Then it must be right.

Mr. Ashton: I think we must have overlooked it in the copy the Court has.

Mr. Moss: That must be true. Isn't this the same copy that you submitted?

Mr. Goldman: That's right. [27]

Mr. Moss: There is no other way it could get in there than being copied from your copy. When the Court is through we will take a look at it again and see if it is in there.

The Referee: There are some other amendments here which were not testified to.

Mr. Moss: I think counsel just asked about a few amendments and then stopped. (To Mr. Turnbull) You didn't intend to cover all of the amendments, did you?

Mr. Turnbull: Oh, no. I asked him to give the dates of the amendments into the record.

The Referee: He didn't give them all. He got off on another subject.

Mr. Turnbull: Well, I did intend to, and I will, ask him to read in the dates of each amendment, later on.

(Testimony of L. S. Mortenson.)

Redirect Examination

By Mr. Moss:

Q. I will show you, as a part of Trustee's Exhibit "1"—it is hard to designate the page except by saying—

Mr. Turnbull: Paragraph, counsel?

Q. —there are, first twenty-two pages, and then an acknowledgment, then the pages start to number again and then there are eleven pages numbered again; then there are five unnumbered pages, and immediately following that there appears to be an amendment, made on the 10th day of May, 1927, which you and I have examined, and which seems to be a correct copy, doesn't it, of the amendment that we thought [28] was omitted?

A. Yes sir.

Mr. Turnbull: May I interrupt counsel and call attention to an error he has made—that is the July one, not the May one.

Mr. Moss: Oh, yes.

Mr. Turnbull: The instrument he actually refers to is dated the 3rd of July, 1928.

Mr. Moss: That is correct.

Witness: These are identical, though. That (indicating) is a copy of this amendment.

Q. So that it is here, but it is out of place, because immediately following it is one dated February 18, 1927?

A. That is correct.

Mr. Ashton: I would like to get cleared up how that one dated is dated February 18, 1927, when the original trust was created in May, 1927.

(Testimony of L. S. Mortenson.)

Q. Will you look at that amendment and see if that is the correct date, see if that is February 1927 or 1928?

A. That is a discrepancy which I can't explain, because the trust was in effect when I went to the bank.

Mr. Turnbull: What is the acknowledgment date, maybe that will clear it up?

Witness: 18th day of February, 1927. It is the same.

Q. Do you think possibly that could have been executed in 1928, and that could have been an error? [29]

A. It could have been.

Mr. Goldman: I think I can clear that up.

By Mr. Goldman:

Q. Isn't it true that at the time we compared this document in your office we checked the notary's records and found there was an error in the year; that that should have been dated 1928?

A. I know that matter came up; I had just forgotten it.

Q. It was a bank notary, and we checked that with the notary's books?

A. I had lost sight of that fact, but evidently it should have been 1928.

Mr. Turnbull: It was early in the year; sometimes we carry a year date over.

The Referee: I suggest that the witness go ahead and give the dates of the amendments. You have all read the one in controversy, October 1928 and July 1928; now if you can get through.

(Testimony of L. S. Mortenson.)

Witness: July 3, 1928; January 7, 1929. Another one dated the same date, January 7, 1929; August 29, 1934; May 29, 1935, and August 3, 1935.

The Referee: Any other questions?

Mr. Bradley: I would like to ask a few questions.

By Mr. Bradley:

Q. Mr. Mortenson, referring to paragraph Eleven of the original trust. [30]

Mr. Moss: You will find that on page 19.

Witness: Yes sir.

By Mr. Bradley:

Q. I would like to ask you, were the provisions in that paragraph changed by any of the subsequent amendments to the trust? A. No.

Mr. Moss: It is interesting to have the witness' opinion about the matter, but the documents speak for themselves.

Mr. Bradley: The documents speak for themselves, but I believe this paragraph is of utmost importance; it is the spendthrift provision. Might I read it?

The Referee: I don't believe it is necessary. We have it in evidence.

Q. Mr. Mortenson, when did you first hear of these proceedings in the matter of Charles Ralph Sentney, bankrupt? A. Last Friday.

Q. That was the time you were served with the order to show cause in this matter?

A. That was the day before we were served. Mr. Goldman called us and told us we would be served.

Mr. Bradley: That is all.

(Testimony of L. S. Mortenson.)

By Mr. Moss:

Q. At the time you prepared these various amendments, it was your practice to deliver a copy of the amendment each time to Mr. Huff, during his lifetime, and Mrs. Huff, after [31] his death?

A. That is correct.

Mr. Moss: That's all.

Mr. Turnbull: That's all.

The Referee: Any other witnesses?

Mr. Moss: That is all of the evidence we have.

Mr. Turnbull: With respect to the order to show cause relative to the application of the trustee to revoke the discharge, I do want to put some proof on on that.

Mr. Moss: Could I compare your answer? Do you deny our allegation that we had no knowledge?

Mr. Goldman: Information or belief; that is denied.

Mr. Turnbull: You say you were informed these things were fraud, and I set up if you got that information you were mistaken; there was no intent to defraud; there was no property concealed under the law and no property that could have been conveyed by the bankrupt, and no property that the creditors could have taken away from him.

Mr. Moss: Unless you will stipulate, I think I had better offer some evidence as to when the Trustee learned of the existence of the trust.

HARRY ASHTON

having been first duly sworn, on oath testified as follows:

Direct Examination

By Mr. Moss: -

Q. Your name is Harry Ashton, and you are the trustee [32] in this bankrupt estate, and petitioner in these two matters? A. That's right.

Q. When, Mr. Ashton, as nearly as you can state, did you first learn of the existence of this trust, a copy of the declaration of which has been offered in evidence, as petitioner's "1"?

A. About the time of the final meeting, or shortly before the final meeting of creditors you conveyed some information to me that you were interested in investigating Mr. Sentney's interest in some estate or trust, but with no specification as to what that was, or anything. Then about a week or ten days ago Mr. Goldman called me and said you were investigating this trust and at that time read to me Paragraph Eleven, and asked me my opinion on it.

Q. Do you recall the date of the final meeting?

A. No.

The Referee: The records show it was September 27, 1943.

Witness: It would not have been over five days either way from that date.

Q. In the neighborhood of September 20, 1943 or September 22nd?

A. It may have been before, or it may have been afterward; I am not certain.

The Referee: Mr. Moss is your attorney?

(Testimony of Harry Ashton.)

Witness: That's right.

The Referee: Of course that is just a chain then; he informed you and I suppose knowledge to him, as your attorney, [33] might be knowledge to you.

Mr. Moss: We set forth September 1, because as near as I could ascertain that was the date I learned of the matter. Mr. Lombardi, my associate, learned about it about September 1st.

The Referee: The record may receive that as evidence. That counsel—Do you want to cross-examine on that question of the first knowledge of the counsel, Mr. Turnbull?

Mr. Turnbull: I want to ask him about the time Mr. Goldman talked to him.

Cross-Examination

By Mr. Turnbull:

Q. You say Mr. Goldman called you?

A. Yes. It was a week or ten days, or some time after Mr. Moss made the statement to me.

Q. And you read page 19, or paragraph 11, of the trust?

A. I don't know that it was page 19 or paragraph eleven, but he stated to me he was reading to me the spendthrift paragraph of the trust.

Q. That was the paragraph in which it said no person other than the Huffs could alienate or anticipate or do anything with the property or the subject matter of the trust, or it could not be reached by any creditors?

A. Yes; it was quite a lengthy statement.

Q. And he told you it had not been included in the schedules because there was nothing there the bankrupt could convey, or nothing that would pass to the creditors? [34]

(Testimony of Harry Ashton.)

Mr. Moss: I object to that as entirely immaterial, what Mr. Goldman said; it is purely incompetent. If it should have been included in the schedules, it makes no difference what Mr. Goldman's opinion about it was, and it is absolutely incompetent to prove anything.

The Referee: Probably so; and it will fall by its own weight, but if Mr. Turnbull wants the full conversation between Mr. Ashton and Mr. Goldman I think he is entitled to it; you opened it up.

Mr. Moss: We opened it for one purpose only, and that was as to the date, and I have no objection to him asking on the date, but I do object to him getting into the record absolutely self-serving incompetent declarations—some sort of moral defense, I guess.

Mr. Turnbull: It is legal defense.

The Referee: Those things of that nature don't affect the record much, but if Mr. Turnbull wants the full conversation, whatever it was, whatever the opinion these gentlemen had about this situation, I think it will be permitted here, because it was opened up as to one part, and probably we should allow all of it.

Witness: I can give you that 'phone conversation. It was over the 'phone that Mr. Goldman first asked me what was going on in the Sentney matter, what was Moss and Lombardi up to, and I said, "I don't know, they stated there was some further investigation of some estate or trust or [35] something like that. I didn't know anything about it. Mr. Goldman made the statement that he knew I wouldn't harass or follow his client, but that Moss and Lombardi might, and he wanted me to know what this trust was, and that he felt there was absolutely no interest, and he then read me the part which I have heretofore stated.

(Testimony of Harry Ashton.)

By Mr. Turnbull:

Q. Purporting to be from the trust?

A. Yes, and asked me what my opinion was, and I told him I would not give an opinion on anyone reading me anything, I would want to examine the entire document, and not only that, I wouldn't express an opinion because my attorneys were already investigating it. I told him if there was something like that it should be brought out in court by an order to show cause against me by his client, or by an order to show cause by me, and he said, "We will take some such steps."

Q. Did Mr. Goldman call your attention to the fact that section 70 of the Bankruptcy Act provided that only property which would pass to the trustee in bankruptcy would be the property he could dispose of in any manner, or which his creditors could have taken over from him?

A. I don't believe he called my attention to it.

Q. Did you call his attention to it? A. No.

Q. You didn't discuss the law on it? [36]

A. No; not at all.

The Referee: Any redirect?

Mr. Moss: I don't think so. I would like to offer in evidence— suppose the Court takes judicial knowledge of all of its records in this matter, but I would like to offer, out of an abundance of caution, the schedules signed by this bankrupt and sworn to, in evidence.

The Referee: The schedules and statement of affairs will be considered in.

Mr. Moss: I think that is all.

Mr. Turnbull: On the order to show cause, with respect to the criminal intent, I think I will put on Mr. Goldman with respect to that.

MARTIN GOLDMAN

having been first duly sworn, on oath testified as follows:

Direct Examination

By Mr. Turnbull:

Q. Your name is Martin Goldman?

A. Yes sir.

Q. And you are an attorney at law?

A. I am.

Q. A member of the Bar of this court?

A. I am.

Q. And have been for more than ten years last past?

A. Yes sir.

Q. You were the attorney of record for Charles Ralph [37] Sentney, the bankrupt herein? A. I was.

Q. And were the person who prepared the schedules and petition? A. That is correct.

Q. At, or immediately prior to the filing of the schedules had you had before you this trust 245 of the First National Bank of Santa Ana, being the one which is now in evidence, executed by the devisors or grantors, W. A. and Edith Huff?

A. I had in my possession a copy of the trust, and some of the amendments to it, perhaps a year prior to that time, and I kept in my files a copy of portions of that trust, and I had before me at the time, I think, all of the original trust agreement.

Q. But not all of the amendments?

A. No; I didn't receive all of the amendments until after the death of Edith Huff.

Q. And you were familiar, generally, with the terms of that trust? A. I was.

(Testimony of Martin Goldman.)

Q. Immediately prior to the preparation of the schedules did you consider the terms of that trust with respect to whether or not there was any interest of property, expectancy or otherwise, which the bankrupt should schedule in his schedules?

A. I did; I made many— [38]

Q. Did you discuss that matter with the bankrupt?

A. I did.

Q. Did you give him an opinion with respect to it?

A. I gave him an opinion after maybe fifteen or twenty hours of briefing the subject.

Q. What was that opinion?

A. That he had no interest.

Q. And that it need not be scheduled?

A. And that it need not be scheduled.

Q. And in preparation of the schedules you did not include it? A. I did not.

Q. At that time did you have the facts with respect to this trust before you?

A. Most of them, with the exception of some later amendments that I later acquired.

Q. You have now examined the amendments, have you? A. I have.

Q. Would that change your opinion which you have on that?

A. It would not. My opinion is just the same now.

Q. In other words, if you had had all of these amendments before you, the advise you would have given your client would be the same?

A. It would be the same.

(Testimony of Martin Goldman.)

Q. At the time you gave your opinion to Mr. Sentney did you have any intent to conceal from the Trustee or the [39] creditors the existence of any property?

A. Of course not.

Q. Did you have any intent to cause your client to conceal any property from the court or trustee?

A. No, no.

Q. Did you have any intent to cause your client, the bankrupt, to make any false oath?

A. Absolutely not.

Cross Examination

By Mr. Moss:

Q. Did you reduce the brief you prepared, as a result of this twenty hours of work, to writing?

A. I did.

Q. Do you have it?

Mr. Turnbull: I have it.

A. I wrote it in longhand, as I remember, part of it, and part of it I dictated, and I had it all typewritten by my secretary.

Q. Prior to the filing of the petition?

A. That's right. Let me qualify that. I think since I had this meeting with you and Mr. Lombardi in your office I did some additional work, and I could not tell you right now which of these items were briefed before or after.

Mr. Turnbull: I also have added some authorities to it in my own handwriting, counsel.

Q. Can't you take a look at these documents now and [40] tell me which ones you had prepared at the time you filed your petition?

(Testimony of Martin Goldman.)

A. Probably. I believe I briefed the case of *McColgan v. McGee*, 172 Cal. 182.

Q. Without going to the extent of reading this document, will you please identify the documents you had prepared at the time you filed the petition?

A. Mr. Moss, I had numerous pages of notes in brief, and when this matter came up I had them all typed on these sheets of paper.

Q. Do you have them?

A. I don't know whether I have them in my file or whether my secretary gave them back to me or not, after she copied them.

Mr. Turnbull: Mr. Moss I have only handed you the portion of the brief the witness gave me. I have another brief but that is the only brief he gave me, as part of his file.

Mr. Moss: I have no desire to see your brief; all I want is to see the one the witness has testified he made.

Mr. Turnbull: The portion I handed you was in his own handwriting.

Mr. Moss: I started to say, facetiously, that by reason that the portion of the brief Mr. Turnbull handed to me which I can read, I can tell it would not be his or mine.

Witness: This is mine. It was prepared subsequently [41] for this matter.

Q. Would you say that these four yellow sheets constitute the brief that you prepared prior to the filing of the petition in bankruptcy?

A. The major portion of that would be.

Q. What else is there that you prepared, if anything, in addition to that?

(Testimony of Martin Goldman.)

A. This reference here (indicating) "Re statement on trusts" and the case of Coughran v. First National Bank of Baldwin Park, 19 Cal. App. (2) 152; the statement quoted from Remington on Bankruptcy; and all of the rest of them I had previous to that time. That is my recollection at this time.

Q. In other words, those that you have mentioned you found after you filed the petition? A. Yes sir.

Q. But with that exception all of the rest of them you had before you filed the petition?

A. Yes; they refer particularly to the matter of concealment of assets. I didn't brief the subject of concealment of assets—at the time the petition was filed I only briefed the question of what rights or properties passed, or what should be scheduled.

Mr. Moss: I offer next in evidence these yellow sheets.

Witness: You have omitted one.

Q. That is the one you state you prepared subsequently? [42] A. That is right.

Mr. Moss: I am not interested in that.

The Referee: I will clip them all together and mark them as "2".

[Trustee's Exhibit No. 2 will be found at the end of the testimony, p. 240.]

By Mr. Moss:

Q. After you made your investigation of the law did you have a discussion of the matter with the bankrupt, in which the results of your investigation were discussed?

A. Yes, of course.

(Testimony of Martin Goldman.)

Q. Did you tell him in that conversation that you had spent approximately twenty hours in briefing the law on the subject?

A. I don't recall whether I told him I had spent twenty hours or not. I think it was not until four or five days after we first discussed it that I did give him an opinion.

Q. What did you say to him in that conversation?

A. I don't think I said much, other than the fact I prepared the schedules from the statements he had given me of his assets and liabilities, and mentioned to him the fact that he had no interest in the trust and therefore it should not be included.

Q. Well, isn't it true that both yourself and the bankrupt were seeking a legal excuse to omit any reference to the trust from the schedules and statement of affairs?

A. No sir.

Q. There was no desire on your part to omit that? [43]

A. No sir.

Q. Did you tell the bankrupt that as a result of your investigation the point was absolutely clear?

A. Yes.

Q. And the question of seeking an excuse, an authority of any kind, to enable you to omit any reference to the trust from the schedules was never discussed between yourself and the bankrupt?

A. That is correct. There was no such discussion.

Q. In other words, you had no reason or desire to omit it, is that correct?

A. No sir. The only reason I prepared it was to know what was the proper thing to do.

(Testimony of Martin Goldman.)

Q. Then you had no reason or desire to omit any reference to the trust from the schedules?

A. Well, the thought never came to my mind. I was not seeking to either omit or put it in. I was seeking the fact of whether it should be put in or not.

Q. You had no reason or desire to omit any reference to the trust from the schedules? A. No.

Q. And you had no reason or desire, either yourself or the bankrupt, to conceal the existence of the trust from the Trustee or the creditors? A. No.

Q. Did you ever have any discussion with the bankrupt [44] wherein the advisability of setting forth all of the facts concerning the trust in the schedules was discussed? A. No sir.

Q. Did you have any discussion with the bankrupt concerning the meaning of Schedule B-4?

A. I think I explained that to the bankrupt. I didn't discuss it with him.

Q. What explanation did you give him?

A. I had my secretary place the amount there, I think \$100, which was the amount he gave me, in connection with his bankruptcy petition, and I told him that was properly filled out, or something to that effect, and I told him to sign it.

Q. And did you tell him that the interest in this trust constituted neither property in reversion, remainder or expectancy, or property held in trust, or property—

A. I don't know what words I used, but I told him he had no property which should be included in that paragraph.

Q. Did the bankrupt make any statement to you as to whether or not it would be advisable to set all of the

(Testimony of Martin Goldman.)

facts forth in the schedules and let the court determine whether or not there was any title or anything that passed to the Trustee? A. We had no such discussion.

Q. The matter of whether or not you should make any reference to the trust anywhere, in either the bankrupt's schedules, his statement of affairs, or his testimony in [45] court was never discussed between yourself and the bankrupt? A. That is not true.

Q. Where was it discussed?

A. Of course it was. I have already testified it was discussed.

Q. Well, please enlighten me. To what testimony do you refer now?

A. I don't remember your questions or the answers I gave to them. If I had the questions I could repeat the answers.

Q. You are referring to the oral part of your testimony where you said you told him it need not be included?

A. That is correct. Let me put it this way: That several times, maybe one or two, before the schedules were filed we discussed generally his assets and liabilities. In that discussion we discussed the possibility that he might have an interest in this trust. I got out a copy of the trust and I told him I could not tell him at once whether that was an asset or not, and five or six days or maybe a week later, I told him it was not. That was the discussion.

Q. Well, when the bankrupt first discussed the filing of this petition in bankruptcy, what reasons did he give you for a desire to file a petition?

(Testimony of Martin Goldman.)

A. He had been in the real estate business and the construction business, and because of the war that business [46] had ceased, you couldn't get any more materials. He had been out of that business at that time for practically a year and a half and he was simply eating up his accumulated earnings, trying to keep his office open. Furthermore he had been inducted, not inducted, but he was taking his medical examination, and he had an obligation to his brother-in-law coming due of many thousands of dollars and if he went into the army he wanted to feel free and easy about his obligations, and I suggested that under the circumstances he had a right to file bankruptcy.

Q. Did he say anything to you about the fact that his aunt was getting quite old and her health was not any too good, and he had better get this thing cleared up before she died, so the creditors wouldn't grab it?

Mr. Turnbull: I object to that on the grounds of the Swift case, which holds that motive is no object. (Here follows a long discussion by Mr. Turnbull of that case) It is immaterial. That is my objection.

Mr. Moss: No one has ever contended anyone need give any motive or reason for filing a petition in bankruptcy; a solvent person may do it.

The Referee: The objection is overruled. Mr. Moss has indicated he wants to place some weight on the lack of the scheduling of this interest, whatever it was, and since the question of intent has arisen, we might as well let the record be complete. [47]

Mr. Turnbull: All right.

By Mr. Moss:

(Testimony of Martin Goldman.)

Q. You want to testify that nothing like what I have mentioned—

Mr. Turnbull: The objection is overruled; let's get the answer.

Witness: What was the question?

(Thereupon the last question was read by the Reporter: "Q. Did he say anything to you about the fact that his aunt was getting quite old and her health was not any too good, and he had better get this thing cleared up before she died, so the creditors wouldn't grab it?")

A. The answer is no.

Q. And the age or condition of health of the aunt was not discussed at all?

A. I don't recall any discussion about that.

Q. And the effect of her death, permitting creditors to acquire what he received or might receive from her, that was never discussed at all?

A. It was discussed, but not at that time.

Q. When was it discussed?

A. After the first meeting of creditors in this court the bankrupt was handed a document advising him to report to the court any properties which he acquired within six months. I explained that document to him and told him if his aunt died within six months from his adjudication he [48] would have to report that fact.

Q. Had you explained that provision of the law to him previously? A. I had not.

Q. In all of your discussions with the bankrupt up to that time, the question of this trust and the existence of this trust, that was never discussed with the bankrupt?

A. It was. I have testified several times that we discussed it.

Testimony of Martin Goldman.)

Q. Well, at this one time you mentioned: at the time you received the form from the court?

A. No. I testified I discussed it with him previous to that time.

Q. You discussed the existence of the trust?

A. And whether or not it should be scheduled.

Q. Yes, but the fact that his aunt was getting old and was in poor health and that she might pass away, and he had better get this cleaned up pretty soon, that was never discussed?

A. No sir, it was not.

Q. You had met the aunt yourself?

A. I had.

Q. You knew she was of advanced age and in poor health?

A. She had been in poor health for many years. She might as well have lived another ten years; she had been in poor health many years. [49]

Q. But you knew these two facts? A. I did.

Q. And you had no discussion with the bankrupt up until the time the Court handed you a copy of the form of the order concerning the reporting of any inheritance within six months; up to that time you had no discussion with the bankrupt concerning the effect of his aunt's death, is that correct? A. That is correct.

Q. And you never made the suggestion to the bankrupt, and you never had any conversation with him to the effect that in view of the fact that his interest in the trust would be of considerable value, and that the extent of the law was such that it required some twenty hours of investigation on your part to arrive at an opinion, that it might be advisable and preferable to set forth in the

(Testimony of Martin Goldman.)

schedules all of the facts concerning the trust and permit the court to pass on the question, and permitting the creditors to have knowledge of the matter?

Mr. Turnbull: Object to that as argumentative, a multiple question, and assuming facts the witness has not testified to.

The Referee: I was trying to follow it and see what the answer in the final analysis would be; what would be "yes" and what would be "no". You are over my depth.

Witness: I think there are twelve answers to the question [50] I can think of.

Mr. Moss: I will reframe my question.

Q. Did you ever say to the bankrupt something like this: Mr. Sentney, this question is not a dead open and shut question. I have spent about twenty hours looking up this law. I am satisfied it does not pass, but someone else might not agree with us, and I think the wise thing for us to do would be to put it in the schedules—Did you have any such conversation with him?

A. No sir. I knew what to do, and what I did was right, and I so advised him.

Q. Did he ask you whether or not it might be better to let everyone know about this and not conceal it?

A. No sir; now no question of concealment ever arose.

Q. He never asked you whether or not it might be better to tell everyone about this trust and not conceal it?

A. No sir.

Mr. Moss: That is our case.

Mr. Turnbull: May I have time to check with the witness, who is also counsel?

The Referee: Yes sir.

(Testimony of Martin Goldman.)

Mr. Turnbull: The respondent rests in each matter.

The Referee: Any further evidence?

Mr. Moss: No more evidence.

Mr. Turnbull: May I suggest this: This is a matter of importance and knowing the tenacity of opposing counsel, I [51] have briefed it pretty well myself and am satisfied with our right, and I would like to give Your Honor the benefit of the exhaustive search I have made. I have read every case in California and most of the ones in the Federal courts on the question of whether this constitutes an interest, or whether it doesn't. The question of if it does not pass there could not be a concealment, and I would like to give you the benefit of what I have done.

The Referee: Is that agreeable to you Mr. Moss?

Mr. Moss: Yes sir, with this explanation and indulgence on the part of court and counsel: I have no law with me on this; I have been working in the law library, and I have to secure the aid of Mr. Lombardi on reading over pertinent office files in preparation of my brief, but I think I can do that in twenty days, maybe less.

Mr. Bradley: I thought I had a case that determined the entire matter.

Mr. Turnbull: I have several.

Mr. Bradley: I thought I had one very recent case from the California court.

Mr. Moss: I don't construe that as Mr. Bradley does. I construe it to support our position.

The Referee: If I have followed Mr. Moss closely enough, he has indicated that regardless of whether or not there was distinctly on the date of bankruptcy an

(Testimony of Martin Goldman.)

asset here, it was still an obligation and duty on behalf of the bankrupt to [52] reveal the expectancy interest in the trust in the schedules and that failure to reveal the same is not a complete discharge—

Mr. Moss: That is correct in one respect, and may I add this further suggestion: Our position is this: We know that it is the custom of many beneficiaries under such trusts to assign their interest, effective as to the date of distribution of the corpus. Of course the trust prohibits alienation during its existence. That would be the law even if it was not in the trust. But we know it is frequently done; that they assign it, effective as of the date of distribution, therefore he could by that means have transferred an interest, to become effective at the date of the distribution.

Mr. Turnbull: I will meet that very issue. We say the law is that no concealment of property can be committed unless the assets charged to be concealed are such that the trustee could have acquired. In other words, if Your Honor had known all of the facts you know now, and the Trustee had known them and Mr. Moss had known them, he still would have had no property in this estate; there was none to pass.

Mr. Moss: We would have had the Court make an order on the bankrupt to transfer any interest in that trust which he might have.

The Referee: There is quite a point in dispute. [53]

Mr. Bradley: May I state the position of the bank?

The Referee: One moment. Where is Exhibit "1"?

(Instrument is handed to the Referee by Mr. Mortenson.)

The Referee: To this I will attach this amendment.

(Testimony of Martin Goldman.)

Mr. Turnbull: No, it is there.

Mr. Turnbull: It will be now stipulated that instead of the trust officer furnishing an additional exhibit, to-wit the amendment of July 3, 1928, it is stipulated that in the Exhibit "A" it is now included, although it is out of place, and the record is now complete?

Mr. Bradley: So stipulated.

Mr. Moss: Yes sir.

Mr. Bradley: The briefs are to be submitted in what order?

The Referee: It seems to me it would save time, Mr. Turnbull, for you to file your brief whenever you can and—

Mr. Bradley: And the brief of the bank?

The Referee: I don't want to require any work at all on behalf of the bank.

Mr. Bradley: Might I submit one authority?

The Referee: Yes, do you have it there?

Mr. Bradley: Yes sir. *Kelly v. Kelly*, 11 Cal. (2) 356. Under that we contend it was the duty of the bank to put the money in the hands of the beneficiaries named.

Mr. Moss: I don't question the fact of the assignment for delivery during the trust, but the assignment [54] was taken in that very case. The plaintiff recovered in that very case.

The Referee: I will keep an open mind on this. I am interested in seeing your authorities and facts. I will mark this submitted, and Mr. Turnbull may file his first brief and Mr. Moss may get his in as soon as possible.

Mr. Moss: There is one thing I overlooked. I would like to offer in evidence, and have filed, a transcript of

(Testimony of Martin Goldman.)

the testimony of the bankrupt, given at the first meeting of creditors, and the stipulation of counsel that that is the only testimony he has given in this proceeding.

Mr. Turnbull: I don't know what counsel is talking about; I have never seen it.

The Referee: Of course, anything the bankrupt has said at any time, under oath, may be received, I think, subject to cross-examination. You are going to have a transcript written up?

Mr. Moss: I think it should be, and filed here.

The Referee: Obviously Mr. Turnbull, in order to determine whether he has concluded his matter, should have the right of inspection.

Mr. Moss: If you want to reopen after you have inspected it I will have no objection.

The Referee: That will be the condition under which it will be received. I suggest you send it to Mr. [55] Turnbull before it comes into my hands.

Mr. Turnbull: I don't imagine I will want a copy.

(Court adjourned.) [56]

State of California

County of Los Angeles—ss.

I, Kate W. Leiden, official reporter for the above entitled court, do hereby certify:

That pages 1 to 56, inclusive, constitute a full, true and correct transcript of a hearing held in the above matter on October 13, 1943, including all of the testimony given, all objections and rulings thereon, together with all statements of Court and Counsel, and all matters pertaining to the above hearing.

.....
Reporter.

[Endorsed]: Filed May 26, 1944.

[TRUSTEE'S EXHIBIT NO. 1]
DECLARATION OF TRUST.

Trust No. 245.

(W. A. Huff)

Know All Men By These Presents:

That Whereas, by assignments, conveyances and other methods of transfer there has been concurrently herewith assigned, conveyed and transferred to The First National Bank of Santa Ana, a national banking corporation, having its principal place of business in the City of Santa Ana, County of Orange, State of California, hereinafter referred to as the Trustee, certain real and personal property, the description of which is set out in Exhibit "A" hereto attached and made a part hereof; and

Whereas, no consideration was paid by the Trustee for any of said assignments, conveyances or transfers, nor will the Trustee in the future pay for any assignments, conveyances or transfers contemplated hereunder, said assignments, conveyances and transfers now made and in the future to be made by W. A. Huff and Edith Huff, his wife, hereinafter referred to as the Trustors;

Now, Therefore, this Declaration of Trust witnesses, certifies and declares that said Trustee holds and continues to hold all the said real and personal property set forth and described in Exhibit "A" hereunto attached, and the other property that may be hereafter assigned, conveyed and transferred to it as herein contemplated, upon the conditions of trust as set forth herein, to-wit:

1.

That the Trustee will hold and continue to hold any and all of said property, both real and personal, excepting that

(Trustee's Exhibit No. 1.)

which has been disposed of by the Trustors in accordance with paragraph twelve hereof, but will not take over the actual management of same until the death of W. A. Huff, one of the Trustors herein, excepting as provided in paragraph eight hereof. [14]

Until such time as the Trustee takes over the actual management of the trust estate, the only duty of said Trustee is to hold the legal title of same; it being a distinct provision of this trust that the Trustee shall not make collections or be responsible for the collection of any of the income of the trust estate held in trust by it until such time as it takes over the *the* actual management of same.

2.

That following the death of W. A. Huff, one of the Trustors herein named, provided there remain in the hands of the Trustee sufficient amounts of the trust estate to permit it so to do, there shall first be paid by the Trustee the funeral expenses, expenses of last illness and just debts of the Trustor, W. A. Huff; and there shall then be distributed to Edith Huff, the other Trustor herein named, all the household furniture and fixtures, and automobiles, together with the personal effects of the said Trustor, W. A. Huff, (provided an assignment of same has been made to the Trustee and still remains in its hands).

From the remainder of the trust estate there shall then be distributed by the said Trustee certain amounts as follows:

First: To S. E. Huff, brother of the said Trustor, W. A. Huff, the sum of Ten Thousand Dollars (\$10,000.).

(Trustee's Exhibit No. 1.)

Should said S. E. Huff not be living, then said Ten Thousand Dollars (\$10,000.) shall become a part of the residue of the trust estate and distributed as hereinafter provided.

Second: To Addie Mahen, daughter of S. E. Huff, brother of said Trustor, W. A. Huff, the sum of Five Thousand Dollars (\$5000.). Should said Addie Mahen not be surviving, but be survived by bodily issue, then said Five Thousand Dollars (\$5000.) shall be paid to her bodily issue per stirpes. Should said Addie Mahen not be surviving and not be survived by bodily issue, then said Five Thousand Dollars (\$5000.) shall become a part of the [15] residue of the trust estate and distributed as hereinafter provided.

Third: To Helen Parke, daughter of C. S. Huff, deceased brother of said Trustor, W. A. Huff, the sum of Five Thousand Dollars (\$5000.). Should said Helen Parke not be surviving but be survived by bodily issue, then said Five Thousand Dollars (\$5000.) shall be paid to her bodily issue per stirpes. Should said Helen Parke not be surviving and not be survived by bodily issue, then said Five Thousand Dollars (\$5000.) shall be paid to her sister, Ethel Huff, and should said Ethel Huff not be living, then to the bodily issue of said Ethel Huff per stirpes. Should said Helen Parke not be surviving and not be survived by bodily issue or by said Ethel Huff, or by bodily issue of said Ethel Huff, then said Five Thousand Dollars (\$5000.) shall become a part of the residue of the trust estate and distributed as hereinafter provided.

Fourth: To Ethel Huff, daughter of C. S. Huff, deceased brother of said Trustor, W. A. Huff, the sum of

(Trustee's Exhibit No. 1.)

Five Thousand Dollars (\$5000.). Should said Ethel Huff not be surviving but be survived by bodily issue, then said Five Thousand Dollars (\$5000.) shall be paid to her bodily issue per stirpes. Should said Ethel Huff not be surviving and not be survived by bodily issue, then said Five Thousand Dollars (\$5000.) shall be paid to her sister, Helen Parke; should said Helen Parke not be living, then to the bodily issue of said Helen Parke per stirpes. Should said Ethel Huff not be surviving and not be survived by bodily issue or by said Helen Parke or by bodily issue of said Helen Parke, then said Five Thousand Dollars (\$5000.) shall become a part of the residue of the trust estate and distributed as hereinafter provided.

Fifth: To Lulu Huff, widow of C. S. Huff, deceased brother of said Trustor, W. A. Huff, the sum of Ten Thousand [16] Dollars (\$10,000.). Should said Lulu Huff not be surviving, then said Ten Thousand Dollars (\$10,000.) shall become a part of the residue of the trust estate and distributed as hereinafter provided.

Sixth: To the First Methodist-Episcopal Church of Santa Ana, California, the sum of Five Thousand Dollars (\$5000.)

The balance of the trust property shall then be handled and disposed of as hereinafter provided.

3.

That part of the trust estate consisting of real property located in the City of Santa Ana and used as a home by the Trustors and real property located at Balboa, California, and used as a home by the Trustors at the time of the death of said W. A. Huff, should he be survived by

(Trustee's Exhibit No. 1.)

his wife, Edith Huff, shall be held in trust by the said Trustee as long as the said Edith Huff wishes to retain said properties; said Edith Huff to pay the taxes, assessments and upkeep of said properties while she wishes them held in trust from the income which she receives as provided in this Declaration of Trust to be paid to her.

At such time as she wishes either of said properties to be sold, the Trustee shall sell same at such a price as is acceptable to said Edith Huff, and the proceeds thereof shall become a part of the trust estate held in trust according to the provisions of paragraph three hereof. Or should the said Edith Huff desire that the proceeds of either or both of said homes, when sold, be reinvested in another home or homes of her choosing, the Trustee may and is hereby authorized to invest said proceeds from the home or homes so sold in another home or other homes such as said Edith Huff may choose. Following her death, should either or both of said homes still remain in trust, said homes shall be sold and the proceeds thereof shall become a part of the trust estates as held in trust and distributed as hereinafter [17] provided for the distribution of the trust estate following the death of said Edith Huff.

The trust estate then remaining in the hands of the Trustee after the payment of the funeral expenses and expenses of last illness and legal debts of the Trustor, W. A. Huff, together with the payment of the sums provided to be paid in subdivisions first to sixth, both inclusive, of paragraph two, shall be divided into two equal parts and each part shall remain in the hands of the Trustee as long as Edith Huff, one of the Trustors herein

(Trustee's Exhibit No. 1.)

named, shall live; and the Trustee shall enter into possession of both parts of the trust estate, manage and control the same and shall have and execute full power and authority;

First: To sell and convey any of the real property so held in trust, and to hold or invest, or reinvest the same, or apply, or dispose of the proceeds in accordance with the terms of this Declaration of Trust.

Second: To mortgage or lease any of the real property belonging to said trust estate for the benefit of any annuitants, or other Beneficiaries named in this Declaration of Trust, or for the purpose of satisfying any charge upon any of the real property belonging to said trust estate.

Third: To receive the rents and profits of any of the real property belonging to said trust estate, and to pay them or apply them to the use of any of the persons as is herein provided, whether ascertained at the time of the creation of this trust or not and in accordance with the terms of this Declaration of Trust.

Fourth: To receive the rents and profits of any real property belonging to said trust estate and to accumulate the same for the purposes as provided in this Declaration of Trust.

Fifth: To convey, partition, divide, distribute, or allot any of the real property belonging to said trust estate in [18] accordance with the terms of this Declaration of Trust.

All of the foregoing purposes are subject to the limitations thereon as imposed by the laws of the State of California.

(Trustee's Exhibit No. 1.)

In addition to the foregoing powers and authorities, the Trustee shall have full power and authority so far as the same relates to any personal property belonging to said trust estate to sell, convey, transfer, incumber, invest, re-invest, collect and in every way contract with, handle, and control in accordance with its best discretion and in accordance with the laws of the State of California.

With the following exception, that should any of the real property of said trust estate be sold by the Trustee, the same shall be sold at its fair market value and according to a price agreed upon by three disinterested individuals versed in land values, said three disinterested individuals to be appointed by said Trustee.

A—The net income available for distribution from one part of the trust estate shall be paid to Edith Huff, one of the Trustors herein named, as long as she shall live; with a provision that should the net income from that part of the trust estate to be paid to said Edith Huff not be sufficient for her maintenance, support and comfort, the Trustee may and is hereby authorized to use sufficient amount of the net income available for distribution from the other part of the trust estate as the Trustee deems necessary and advisable for the maintenance, support and comfort of said Edith Huff; and should the income of both parts of the trust estate not be sufficient for the maintenance, support and comfort of the said Edith Huff, the Trustee may and is hereby authorized to distribute sufficient amount of the principal of that part of the trust estate held in trust for her benefit as she may demand in addition to the net income hereinbefore provided to be paid to her. [19]

(Trustee's Exhibit No. 1.)

B—The net income available for distribution from the other part of the trust estate, after deducting the amounts, if any, as hereinbefore provided to be paid to Edith Huff, shall be distributed in the following manner:

One-third thereof to S. E. Huff, brother of the Trustor, W. A. Huff, until the death of said Edith Huff, the other Trustor herein named. Should the said S. E. Huff not be surviving or die before the death of said Edith Huff, then from said one-third there shall be paid, provided said income will permit, the sum of One Hundred Dollars (\$100) a month to the wife of S. E. Huff, provided she is then living. And any income in excess of One Hundred Dollars (\$100) a month shall be distributed to the said Edith Huff, the other Trustor herein named as long as she shall live.

One-third thereof to Helen Parke, daughter of C. S. Huff, deceased brother of W. A. Huff, one of the Trustors herein, until the death of said Edith Huff, the other Trustor herein. Should said Helen Parke not be surviving or die before the death of said Edith Huff, then that part of the income that would have been distributed to her shall be distributed in the following manner: The Trustee shall divide said income among the bodily issue of said Helen Parke per stirpes, provided they have attained the age of eighteen years. Should any of said bodily issue of said Helen Parke not have attained the age of eighteen years, then that part of the income that would have been distributed to them, should they have attained the age of eighteen years, shall be used by said Trustee towards the maintenance and education of said bodily issue not having attained the age of eighteen years; and the re-

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mainder thereof, if any, shall be deposited in a savings account for the benefit of said bodily issue who shall not have attained the age of eighteen years, and the income accumulated thereon and distributed to said bodily issue at such time [20] as said bodily issue attain the age of eighteen years respectively; but notwithstanding anything to the contrary herein, same shall terminate on the death of said Edith Huff.

Should there be no bodily issue of said Helen Parke surviving, then the part of the income that would have been distributed to them shall be distributed to her sister, Ethel Huff; should said Ethel Huff not be surviving but be survived by bodily issue, then the Trustee shall divide said income among the bodily issue of said Ethel Huff per stirpes, provided they have attained the age of eighteen years. Should any of said bodily issue of said Ethel Huff not have attained the age of eighteen years, then from that part of the income that would have been distributed to them, should they have attained the age of eighteen years, shall be used by said Trustee towards the maintenance and education of said bodily issue not having attained the age of eighteen years; and the remainder thereof, if any, shall be deposited in a savings account for the benefit of said bodily issue, who shall not have attained the age of eighteen years, and the income accumulated thereon and distributed to said bodily issue at such time as said bodily issue attain the age of eighteen years respectively; but notwithstanding anything to the contrary herein, same shall terminate on the death of said Edith Huff.

Should said Helen Parke not be surviving and not be surveved by bodily issue, or by said Ethel Huff, or by

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bodily issue of said Ethel Huff, then said part of the income shall be distributed to said Edith Huff as long as she shall live.

One-third thereof to Ethel Huff, daughter of C. S. Huff, deceased brother of W. A. Huff, one of the Trustors herein, until the death of said Edith Huff, the other Trustor herein. Should said Ethel Huff not be surviving or die before the death of said Edith Huff, then that part of the income that would have been distributed to her shall be distributed in the following manner: [21] The Trustee shall divide said income among the bodily issue of said Ethel Huff per stirpes, provided they have attained the age of eighteen years. Should any of said bodily issue of said Ethel Huff not have attained the age of eighteen years, then from that part of the income that would have been distributed to them, should they have attained the age of eighteen years, shall be used by said Trustee towards the maintenance and education of said bodily issue not having attained the age of eighteen years; and the remainder thereof, if any, shall be deposited in a savings account for the benefit of said bodily issue not yet eightteen years of age, and the income accumulated thereon and distributed to said bodily issue at such time as said bodily issue attain the age of eighteen years respectively; but notwithstanding anything to the contrary herein, same shall terminate on the death of said Edith Huff.

Should there be no bodily issue of said Ethel Huff surviving, then the part of the income that would have been distributed to them shall be distributed to her sister, Helen Parke; or in the event of her death as provided for, for distribution of her income.

(Trustee's Exhibit No. 1.)

Should said Ethel Huff not be surviving and not be survived by bodily issue, or by said Helen Parke, or by bodily issue of said Helen Parke, then said part of the income shall be distributed to said Edith Huff as long as she shall live.

4.

Following the death of said Edith Huff, one of the Trustors herein named, from that part of the trust estate referred to as "A" under paragraph three then remaining in the hands of the Trustee the Trustee shall pay her funeral expenses and expenses of last illness and legal debts, and thereafter there shall first be paid the sum of Five Thousand Dollars (\$5000.) to the Christian Church of Santa Ana, California. The remainder of the trust [22] estate held under "A" of paragraph three shall remain in the hands of the Trustee as long as Ella Whitted, sister of said Edith Huff, shall live, and as long thereafter until Jane Whitted, greatniece of said Edith Huff, has attained the age of twenty-one years. Should said Ella Whitted not live until said Jane Whitted has attained the age of twenty-one years, then said trust estate shall remain in the hands of the Trustee until said Jane Whitted has attained the age of twenty-one years, or should the said Ella Whitted die and the said Jane Whitted not live to attain the age of twenty-one years then the trust estate shall be held in trust until such time as the said Jane Whitted would have attained the age of twenty-one years should she have lived, provided that any of the herein specifically named Beneficiaries, who shall be alive at the creation of this trust, be living.

The net income of the trust estate held under "A" of paragraph three shall be distributed as follows:

(Trustee's Exhibit No. 1.)

First: To said Ella Whitted the sum of One Hundred Fifty Dollars (\$150) monthly during her life.

Second: To Jack Whitted, Margaret Whitted, Milo Mitchell, Gladys Mitchell, and Eileen Beaty, greatnephews and greatnieces of the said Trustor, Edith Huff, the sum of Fifty Dollars (\$50.00) a month each, until the termination of this trust.

Third: The sum of Fifty Dollars (\$50.00) a month of said income shall be distributed and accumulated by the Trustee in the following manner: Ten Dollars (\$10.00) thereof shall be used by the said Trustee towards the maintenance and education of Donald Whitted, son of Rex Whitted, nephew of the Trustor, Edith Huff, until he attains the age of eight years. Fifteen Dollars (\$15.00) a month shall be used by the said Trustee towards the maintenance and education of said Donald Whitted from the time he attains the age of eight years until he attains the age of twelve years. Twenty-five Dollars (\$25.00) a month shall be used [23] by the said Trustee towards the maintenance and education of said Donald Whitted from the time *he* attains the age of twelve years until he attains the age of sixteen years. Fifty Dollars (\$50.00) a month shall be used by the said Trustee towards the maintenance and education of said Donald Whitted from the time he attains the age of sixteen years until he attains the age of twenty-one years, provided he attends a high school, college or university; if he does not attend a high school, college or university, said Fifty Dollars (\$50.00) a month shall be deposited in a savings account and the interest accumulated and paid to him when he attains the age of twenty-one years.

(Trustee's Exhibit No. 1.)

The balance of the Fifty Dollars (\$50.00) a month as hereinbefore provided shall be deposited in a savings account and the income accumulated until said Donald Whitted attains the age of sixteen years when the sums so accumulated in a savings account, including the earnings thereon, shall be used towards the maintenance and education of said Donald Whitted, provided he attends a high school, college or university. If he does not attend a high school, college or university, said sums are to be accumulated and paid to him when he attains the age of twenty-one years.

Should said Donald Whitted not live to attain the age of twenty-one years but be survived by bodily issue, then the said amounts as hereinbefore provided to be paid to him or accumulated for him shall be distributed to his bodily issue per stirpes. Should he not live to attain the age of twenty-one years and not be survived by bodily issue, then the amounts hereinbefore provided to be paid to him or accumulated for him shall become a part of the net income of that part of the trust estate referred to as "A" of paragraph three and shall be distributed as hereinafter provided under subdivision sixth of this paragraph four.

Fourth: The sum of Fifty Dollars (\$50.00) a month of [24] the net income shall be distributed and accumulated by the said Trustee in the following manner: Twenty-five Dollars (\$25.00) a month thereof shall be used by the said Trustee towards the maintenance and education of Jane Whitted, greatniece of said Trustor, Edith Huff, until said Jane Whitted has attained the age of sixteen years; Fifty Dollars (\$50.00) a month shall be used

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by the Trustee towards the maintenance and education of said Jane Whitted from the time she attains the age of sixteen years until she attains the age of twenty-one years, provided she attends a high school, college or university; if she does not attend a high school, college or university, said Fifty Dollars (\$50.00) a month shall be deposited in a savings account and the interest accumulated and paid to her when she has attained the age of twenty-one years. The balance of the Fifty Dollars (\$50.00) a month as hereinbefore provided shall be deposited in a savings account for her benefit and the income accumulated until the said Jane Whitted attains the age of sixteen years when the sums so accumulated in a savings account, including the earnings thereon, shall be used towards the maintenance and education of said Jane Whitted, provided she attends a high school, college or university; if she does not attend a high school, college or university, said sums are to be accumulated and paid to her when she attains the age of twenty-one years.

Should said Jane Whitted not live to attain the age of twenty-one years but be survived by bodily issue, then the said amounts as hereinbefore provided to be paid to her or accumulated for her shall be distributed to her bodily issue per stirpes. Should she not live to attain the age of twenty-one years and not be survived by bodily issue, then the amounts hereinbefore provided to be paid to her or accumulated for her shall become a part of the net income of that part of the trust estate referred to as "A" of paragraph three and shall be distributed as herein- [25] after provided under subdivision sixth of this paragraph four.

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Fifth: The sum of Fifty Dollars (\$50.00) a month for the net income shall be distributed and accumulated by the said Trustee in the following manner: Twenty-five Dollars (\$25.00) a month thereof shall be used by the said Trustee towards the maintenance and education of Billy Whitted, greatnephew of the said Trustor, Edith Huff, until said Billy Whitted has attained the age of sixteen years; Fifty Dollars (\$50.00) a month shall be used by the Trustee towards the maintenance and education of said Billy Whitted from the time he attains the age of sixteen years until he attains the age of twenty-one years, provided he attends a high school, college or university, if he does not attend a high school, college or university, said Fifty Dollars (\$50.00) a month shall be deposited in a savings account and the interest accumulated and paid to him when he has attained the age of twenty-one years. The balance of the Fifty Dollars (\$50.00) a month as hereinbefore provided shall be deposited in a savings account for his benefit and the income accumulated until the said Billy Whitted attains the age of sixteen years when the sums so accumulated in a savings account, including the earnings thereon, shall be used towards the maintenance and education of said Billy Whitted, provided he attends a high school, college or university; if he does not attend a high school, college or university, said sums are to be accumulated and paid to him when he attains the age of twenty-one years.

Should said Billy Whitted not live to attain the age of twenty-one years but be survived by bodily issue, then the said amounts as hereinbefore provided to be paid to him or accumulated for him shall be distributed to his

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bodily issue per stirpes. Should he not live to attain the age of twenty-one years and not be survived by bodily issue, then the amounts hereinbefore provided to be paid to him or accumulated for him shall become a [26] part of the net income of that part of the trust estate referred to as "A" of paragraph three and shall be distributed as hereinafter provided under subdivision sixth of this paragraph four.

Sixth: The remainder of the net income of that part of the trust estate referred to as "A" of paragraph three shall be distributed by the said Trustee equally to the following nieces and nephews of the said Trustor, Edith Huff: Rex Whitted, Roscoe Whitted, Louie Beaty, Bernice Lutz, Ralph Sentney, and Mrs. Stella Mitchell; or in the event of the death of any of them, his or her share shall go to his or her bodily issue per stirpes, and if no bodily issue to the other Beneficiaries named in this subdivision sixth or to their bodily issue per stirpes.

Following the death of the said Ella Whitted, sister of the Trustor, Edith Huff, and thereafter at the times hereinbefore set forth for the termination of said portion of this trust, the trust estate then remaining in the hands of the Trustee shall be distributed by the said Trustee two-thirds thereof equally to the following nieces and nephews of the said Trustor, Edith Huff: Rex Whitted, Roxcoe Whitted, Louie Beaty, Bernice Lutz, Ralph Sentney, and Mrs. Stella Mitchell; and one-third thereof equally to the following great-nieces and great-nephews of the said Trustor, Edith Huff: Jack Whitted, Margaret Whitted, Milo Mitchell, Gladys Mitchell, Eileen Beaty, Billy Whitted, Jane Whitted, and Donald Whitted. Pro-

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vided, however, that that part to be distributed to said Donald Whitted shall not be distributed to him unless he has attained the age of twenty-five years. If he has not attained the age of twenty-five years, same shall be held in trust and the income distributed to him monthly until he has attained the age of twenty-five years when the principal held for him shall be distributed to him.

Should any of the hereinbefore named Beneficiaries, who are to receive income or principal from that part of the trust [27] estate referred to as "A" under paragraph three, not be living, or die during the life of this trust and be survived by bodily issue, then said income or principal shall be paid to said bodily issue per stirpes. Should any of said Beneficiaries not be living or die during the life of this trust and not be survived by bodily issue, then the income or principal that would have been distributed to them shall be distributed as provided for the distribution of income in subdivision sixth of this paragraph four.

5.

That part of the trust estate referred to as "B" under paragraph three, following the death of said Edith Huff, one of the Trustors herein, shall be distributed as soon as can conveniently be done so as to preserve the trust estate:

First: One-third thereof to S. E. Huff, brother of the Trustor, W. A. Huff, provided he is surviving. If he is not surviving but is survived by a wife, then said one-third shall be held in trust and from the net income thereof there shall be paid the sum of One Hundred Dollars (\$100) a month to his wife, provided she is then living; and the remainder of the net income available for

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distribution from said one-third shall be distributed, share and share alike, to said Helen Parke and Ethel Huff, daughters of said C. S. Huff, deceased brother of the Trustor, W. A. Huff, as long as the said wife of said S. E. Huff shall live. Following the death of said wife of said S. E. Huff, said one-third shall be distributed equally to said Helen Parke and Ethel Huff.

Should said S. E. Huff not be surviving and not be survived by a wife, the said one-third to be distributed to him shall be distributed to said Helen Parke and Ethel Huff, daughters of C. S. Huff, deceased brother of said Trustor, W. A. Huff, share and share alike. If either said Helen Parke or Ethel Huff should [28] not then be living, then the share that would have been distributed to her, had she been living, shall be distributed to her bodily issue per stirpes; if no bodily issue of said Helen Parke or Ethel Huff so dying should be surviving, then said share shall go to the survivor of said Helen Parke or Ethel Huff. Should neither said Helen Parke or Ethel Huff be surviving and no bodily issue of theirs surviving, then said part of the trust estate that would have been distributed to them shall be distributed to the heirs of Edith Huff, one of the Trustors herein, according to the then existing statutes of succession of the State of California.

Second: One-third thereof to Helen Parke, niece of the said Trustor, W. A. Huff, provided she is surviving, If she is not surviving, but is survived by bodily issue, then said one-third shall be distributed to her bodily issue per stirpes, or to their legal guardian if they have not attained the age of majority. Should she not be surviving and

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not be survived by bodily issue, then said one-third shall be distributed to her sister, Ethel Huff; and if said Ethel Huff is not surviving, but there be surviving bodily issue of said Ethel Huff, then said one-third shall be distributed to the bodily issue of said Ethel Huff or to their legal guardian if they have not attained the age of majority; and if there be no bodily issue of said Ethel Huff surviving, then said one-third shall be distributed to the heirs of said Edith Huff according to the then existing laws of succession of the State of California.

Third: One-third thereof to Ethel Huff, niece of the said Trustor, W. A. Huff, provided she is surviving. If she is not surviving, but is survived by bodily issue, then said one-third shall be distributed to her bodily issue per stirpes, or to their legal guardian if they have not attained the age of majority. Should she not be surviving and not be survived by bodily issue, then said one-third shall be distributed to her sister, [29] Helen Parke; and if said Helen Parke is not surviving, but there be surviving bodily issue of said Helen Parke, then said one-third shall be distributed to the bodily issue of said Helen Parke or to their legal guardian if they have not attained the age of majority. And if there be no bodily issue of said Helen Parke surviving, then said one-third shall be distributed to the heirs of said Edith Huff according to the then existing laws of succession of the State of California.

6.

Following the death of said Edith Huff, one of the Trustors herein named, should she be survived by W. A. Huff, the other Trustor herein named, all the household

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furniture and fixtures, and automobiles, together with the personal effects of the Trustor, Edith Huff, shall be distributed by the said Trustee (provided an assignment of same has been made to the Trustee and still remains in its hands) to the said Trustor, W. A. Huff.

All the rest, residue and remainder of the trust estate is to remain in trust until the death of said W. A. Huff and said W. A. Huff is to manage said trust estate, and the Trustee shall not be liable for the management of said trust estate so managed by said W. A. Huff following the death of said Edith Huff, and by said W. A. Huff is to retain the income from said trust estate, together with as much of the principal thereof as he may need for his comfort and support, but, nevertheless, not to exceed a portion of the principal in excess of one-half thereof.

Following the death of said W. A. Huff the trust estate then remaining in the hands of the Trustee, after his funeral expenses, expenses of last illness and all his legal debts have been paid, shall be distributed in the same manner as though the said Edith Huff had survived him and died thereafter as hereinbefore provided. [30]

7.

It is, however, stipulated and provided as a condition of this trust, controlling all other provisions of this trust and anything to the contrary herein notwithstanding, that this trust shall terminate and end immediately upon the deaths of the Trustors and all the herein specifically named Beneficiaries, who shall be alive at the date of the execution of this trust, and at said time the Trustee shall distribute all of the principal or corpus of this trust remaining in its hands to the persons entitled thereto as herein provided.

(Trustee's Exhibit No. 1.)

8.

Should the Trustors, during the life of this trust, request the Trustee in writing to manage said trust estate, or should the said W. A. Huff, following the death of the said Edith Huff, request the Trustee in writing to manage said trust estate, the Trustee shall then enter into possession of said trust estate, manage and control the said trust estate in the same manner as provided in paragraph three hereof.

9.

The net income from the said trust estate during the management of said trust estate by said Trustee, should it manage said trust estate as provided in paragraph ten hereof, shall be paid to or for the maintenance and comfort of both of said Trustors, together with as much of the principal of the trust estate as may be necessary for the maintenance and comfort of both of said Trustors.

10.

From such time as the said Trustee takes over the management of the said trust estate, following the death of W. A. Huff, or following the death of both of the Trustors, or should it manage said trust estate as provided in paragraph eight hereof, there shall first be paid from the gross income received or [31] derived from said trust estate, or the principal thereof as the Trustee may deem advisable and necessary, or any part thereof, all taxes, including income tax, federal estate and state inheritance taxes, costs, charges and expenses incurred in the care, administration and protection of said trust estate and in the protection of this trust and its defense against legal and equitable attack by any person or persons, and the

(Trustee's Exhibit No. 1.)

Trustee shall receive a compensation for acting as Trustee hereunder of five per cent (5%) of the gross income of the said trust estate during the time it shall manage said trust estate or any part thereof, and upon the termination of said trust estate or the distribution of any corpus or principal thereof, the Trustee shall receive a compensation, in addition thereto, of one per cent (1%) of the reasonable value of all the corpus or principal of the trust estate distributed according to the terms hereof and for the final closing and settlement of this trust. And the Trustee shall receive a compensation for carrying the trust estate but while not actually managing said trust estate of Twenty Dollars (\$20.00) yearly.

11.

Each and every beneficiary under this trust is hereby restrained from, and shall be without right, power and/or authority to sell, transfer, pledge, mortgage, hypothecate, alienate, anticipate, or in any other manner affect or impair his or her beneficial and/or legal rights, titles, interests, claims and/or estates in and/or to the income and/or principal of this trust during the entire term thereof, nor shall the rights, titles, interests, and/or estates of any beneficiary hereunder be subject to the rights or claims of the creditors of any beneficiary nor subject nor liable to any process of law or Court upon the claim of any such creditor, and all the income and/or principal under this trust shall be transferable, payable and/or [32] deliverable, only, solely, exclusively, and personally to the herein designated beneficiaries, or their lawful guardian or guardians hereunder at the time they are entitled to take the same under the terms of this trust, and the per-

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sonal receipt of the designated beneficiary hereunder, or their lawful guardian, shall be a condition precedent to the payment or delivery of the same by said Trustee.

12.

The said Trustors herein named reserve to themselves the exclusive possession and use and enjoyment in, and all rights to, the rents, issues and profits of all the property herein set forth in Exhibit "A", and all other properties that may be hereafter transferred, assigned, set over or conveyed to the Trustee, and each of said properties, for and during the term of the natural lives of both of said Trustors herein named; and it is further understood that this trust, being gratuitously created by said Trustors hereinbefore named, the right and power is hereby reserved unto said Trustors to revoke or amend this trust, in whole or in part, at any time, at their pleasure, during the lives of both of said Trustors, by request in writing addressed and delivered to said Trustee; and the Trustors further reserve the right to revoke any or all of said transfers, assignments or conveyances as to any of the property in Exhibit "A" described, or any other property which may be transferred, assigned or conveyed to said Trustee under this trust, upon giving said Trustee notice in writing, duly executed by both of said Trustors before an officer duly authorized to administer oaths. A provision governing this trust provides that, following the death of either of the Trustors, the surviving Trustor shall not have the right to revoke or amend this trust, in whole or in part, and shall not reserve the right to revoke any of the said transfers, assignments or conveyances as to any of the property in Exhibit "A" [33] described, or any other property which may be transferred, assigned or conveyed

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to said Trustee under this trust, except that in the event of the death of either of the Trustors the surviving Trustor

~~Trustor~~ reserves the right to amend or alter this Declaration of Trust insofar as the same relates to the distribution of the one-half of the trust estate herein provided to be distributed to the family of said surviving Trustor by changing the name of the Beneficiaries or changing the amounts any Beneficiary is entitled to, such amendment to be made in writing acknowledged before an officer authorized to administer oaths and filed with the Trustee during the lifetime of the said surviving Trustor.

13.

The Trustee hereby agrees to act under the terms of this instrument upon the following conditions:

Except for its wilful default or gross negligence, it shall not be liable to any one, and when in its discretion it acts upon legal counsel selected and employed by it in good faith in accordance with the opinion of such counsel, it shall not be liable for any result of such action, and should it be called upon to perform unlooked for or unanticipated duties in connection with this trust, not specifically provided for, it shall receive a reasonable compensation for the performance and discharge of such duties and for fees for such attorneys as it shall select and employ, and the Trustee does not and shall not assume any obligation to pay for or on account of any one whomsoever, any money except as herein specified or provided, except at its option so to do, nor shall said Trustee be required to pay anything to any one unless there is sufficient money in said trust fund so to do.

(Trustee's Exhibit No. 1.)

In Witness Whereof, said The First National Bank of Santa Ana, in its capacity as Trustee, has caused this instrument to be executed by its proper officer thereunto [34] duly authorized, under its corporate seal, this 10th day of May, 1927.

THE FIRST NATIONAL BANK OF SANTA ANA.

By E. B. Sprague Asst. Trust Officer.

Trustee.

We, the undersigned, named in the foregoing Declaration of Trust as Trustors, do hereby approve, ratify and confirm the same in all its parts, and we do hereby agree respectively to be bound by all the terms thereof.

Dated this 10th day of May, 1927.

W. A. Huff

Edith Huff [35]

State of California,
County of Orange—ss.

On this 10th day of May, 1927, before me, E. Virginia Craig, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared E. B. Sprague, known to me to be the Assistant Trust Officer of the corporation described in and that executed the within instrument, and acknowledged that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

E. Virginia Craig.

Notary Public in and for said County and State.

(Trustee's Exhibit No. 1.)
State of California,
County of Orange,—ss.

On this 10th day of May, 1927, before me, E. Virginia Craig, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared W. A. Huff and Edith Huff, known to me to be the persons described in and that executed the within instrument, and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

E. Virginia Craig.

Notary Public in and for said County and State. [36]

(Trustee's Exhibit No. 1.)

EXHIBIT "A" TO
DECLARATION OF TRUST NO. 245
W. A. HUFF and EDITH HUFF, TRUSTORS,
THE FIRST NATIONAL BANK OF SANTA ANA,
TRUSTEE.

The following described real and personal property has been transferred, assigned and conveyed to the Trustee to be held in trust by the Trustee for the Trustors:

1— Certificate No. 94 for 10 shares of the capital stock of The Abstract and Title Guaranty Company, par value \$100 each, issued in the name of W. A. Huff on the 22nd day of November, 1909.

2— Certificate No. 2 for 12 shares of the capital stock of Broadway Improvement Company, par value \$100 each, issued in the name of W. A. Huff on the 23rd day of June, 1922.

3— Certificate No. 9 for 64 shares of the capital stock of Broadway Improvement Company, par value \$100 each, issued in the name of W. A. Huff on the 22nd day of November, 1922.

4— Certificate No. 51 for 35 shares of the capital stock of Broadway Improvement Company, par value \$100 each, issued in the name of W. A. Huff on the 8th day of February, 1923.

5— Certificates Nos. $\frac{S}{F}$ 17388 and $\frac{S}{F}$ 16231 of the fully paid and non-assessable shares, without nominal or par value of the stock of California Packing Corporation, issued in the name of W. A. Huff on August 5, 1926, and August 2, 1926, respectively, 100 shares each.

(Trustee's Exhibit No. 1.)

6— Bonds Nos. 8600, 8601, 8670, 8671, and 8672 of the State of California, State Highways, each in the amount of \$1000, 5- $\frac{3}{4}$ %, dated July 3, 1921, due July 3, 1934, interest payable January 3 and July 3; with interest coupons Nos. 16 to 30, both inclusive, each in the amount of \$28.75 attached to each bond.

7— Joint Stock Farm Loan Bond No. MI36211 of the California Joint Stock Land Bank of San Francisco, California, in the amount of \$1000, coupon bond issued November 1, 1921, redeemable after November 1, 1931; payable November 1, 1951, interest payable May 1 and November 1; with interest coupons Nos. 12 to 60, both inclusive, each in the amount of \$25.00, attached.

8— Certificate No. 1 for 5 shares of the capital stock of The Farmers and Merchants Savings Bank of Santa Ana, par value \$100 each, issued in the name of W. A. Huff on the 19th day of June, 1919.

9— Certificate No. E761 for 145¹ shares of the Capital Stock of The First National Bank of Santa Ana, par value \$100 each, issued in the names of W. A. Huff and Edith Huff, Joint Tenants with right of Survivorship, on May 3, 1927. [37]

10— Mortgage Certificate No. 1029 of the Federal Finance Company, Inc., for \$5000, issued January 16, 1925, to W. A. Huff, with interest coupons Nos. 9 and 10, each in the amount of \$175, attached.

11— Mortgage Certificate No. 1030 of the Federal Finance Company, Inc., for \$5000, issued to W. A. Huff on January 16, 1925, with interest coupons Nos. 9 and 10, each in the amount of \$175, attached.

(Trustee's Exhibit No. 1.)

12— Mortgage Certificate No. 1031 of the Federal Finance Company, Inc., for \$2000, issued to W. A. Huff on January 16, 1925, with interest coupons Nos. 5 to 10, both inclusive, each in the amount of \$60.00, attached.

13— Mortgage Certificate No. 1090 of the Federal Finance Company, Inc., for \$5000, issued to Edith Huff on April 29, 1926, with interest coupons Nos. 2 to 6, both inclusive, each in the amount of \$175, attached.

14— Mortgage Certificate No. 1129 of the Federal Finance Company, inc., for \$1000, issued to W. A. Huff on July 19, 1926, with interest coupons Nos. 2 to 6, both inclusive, each in the amount of \$35.00, attached.

15— Certificate No. 5 for 1 share of the capital stock of the Federal Finance Company, Inc., issued to W. A. Huff and Edith Huff, as joint tenants, on December 20, 1922, par value \$100 per share.

16— Certificate No. 36 for 49 shares of the capital stock of the Federal Finance Company, Inc., issued to W. A. Huff and Edith Huff, as joint tenants, on May 1, 1923, par value \$100 per share.

17— Certificate No. 176 for 25 shares of the capital stock of the Federal Finance Company, Inc., issued to W. A. Huff and Edith Huff, as joint tenants, August 15, 1924, par value \$100 per share.

18— Certificate No. 261 for 25 shares of the capital stock of the Federal Finance Company, Inc., issued to W. A. Huff and Edith Huff, as joint tenants, December 19, 1924, par value \$100 per share.

(Trustee's Exhibit No. 1.)

19— Certificate No. 309 for 60 shares of the capital stock of the Federal Finance Company, Inc., issued to W. A. and Edith Huff, as Joint Tenants, January 15, 1926, par value \$100 per share.

20— Certificate No. 410 for 40 shares of the capital stock of the Federal Finance Company, Inc., issued to W. A. and Edith Huff, Joint tenants with right of survivorship, February 14, 1927, par value \$100 per share.

21— Certificate No. A 1047 for 10 shares of the Preferred Capital Stock of Goodyear Tire & Rubber Company of California, issued in the name of [38] W. A. Huff on January 2, 1920, par value \$100 per share.

22— Certificate No. A 4819 for 10 shares of the Preferred Capital Stock of Goodyear Tire & Rubber Company of California, issued in the name of W. A. Huff on October 4, 1920, par value \$100 per share.

23— Certificate No. C 8 for 50 shares of the Globe Grain and Milling Company Common Capital Stock, issued in the name of W. A. Huff on June 5, 1919, par value \$100 each.

24— Certificate No. C 955 for 12 shares of the Common Capital Stock of Globe Grain and Milling Company issued in the name of W. A. Huff on September 22, 1920, par value \$100 per share.

25— Certificate No. C1690 for 38 shares of the Common Capital Stock of Globe Grain and Milling Company issued in the name of W. A. Huff on November 10, 1920, par value \$100 per share.

(Trustee's Exhibit No. 1.)

26— Certificate No. 594 for 3 shares of the Capital Stock, Preferred, Series F Redeemable July 1, 1927, Globe Grain and Milling Company, issued in the name of W. A. Huff on May 27, 1919, par value \$100 per share.

27— Certificate No. 595 for 3 shares of the Preferred Capital Stock, Series G Redeemable July 1, 1928, Globe Grain and Milling Company, issued in the name of W. A. Huff on May 27, 1919, par value \$100 per share.

28— Certificate No. 596 for 3 shares of the Preferred Capital Stock, Series H Redeemable July 1, 1929, Globe Grain and Milling Company, issued in the name of W. A. Huff on May 27, 1919, par value \$100 per share.

29— Bonds Nos. M 1341, M 1342, M 1343, M 1344 and M 1345, Garden Foundation, Incorporated, First Mortgage $6\frac{1}{4}\%$ Sinking Fund Gold Bonds, each in the sum of \$1000, principal due January 1, 1937, interest payable July 1 and January 1, with interest coupons Nos. 1 to 20, both inclusive, each in the amount of \$31.25, attached.

30— Certificate No. 4353 for 10 shares of Installment Stock (for 10 shares of the Capital Stock) of the Home Mutual Building and Loan Association of Santa Ana, issued to W. A. Huff and Edith Huff as joint tenants with the right of survivorship, dated January 2, 1917, Series No. 40, par value \$200 per share.

31— Certificate No. 551 for 50 shares of the capital stock of Holly Oil Company issued to W. A. Huff on July 22, 1921, par value \$5.00 per share.

(Trustee's Exhibit No. 1.)

32— Certificate No. 2 for 1 share of the Capital Stock of W. A. Huff Co. issued to Edith Huff, par value \$500 per share. [39]

33— Certificate No. 7 for 58½ shares of the Capital Stock of W. A. Huff Co. issued to W. A. Huff on August 1, 1922, par value \$500 per share.

34— Certificate No. 8 for 1½ shares of the Capital Stock of W. A. Huff Co. issued to Edith Huff on August 1, 1922, par value \$500 per share.

35— Certificate No. 11 for 14 shares of the Capital Stock of W. A. Huff Co. issued to W. A. Huff on February 14, 1927, par value \$500 per share.

36— Membership Certificate No. 125 of the Santa Ana Industrial Fund issued to W. A. Huff on January 6, 1917.

37— Joint Stock Farm Loan Bonds Nos. MI30946, MI30947, MI30948, MI30949, and MI30950 of The Central Iowa Joint Stock Land Bank of Des Moines, Iowa, each in the sum of \$1000, issued November 1, 1921, redeemable after November 1, 1931, payable November 1, 1951, interest payable May 1 and November 1; with Interest Coupons Nos. 12 to 60, both inclusive, each in the sum of \$27.50, attached to each bond.

38— Trust Certificate No. 45, Trust No. 6036, for 50 shares of the Capital Stock of The Los Angeles Morris Plan Company, issued to W. A. Huff on March 18, 1926, by the Security Trust & Savings Bank of Los Angeles, California.

39— Bonds Nos. 17, 18, and 19 of the La Verne City School District, 6%, each in the sum of \$1000,

(Trustee's Exhibit No. 1.)

principal due April 1, 1932, interest payable April 1, with interest coupons Nos. 7 to 11, both inclusive, each in the amount of \$60.00, attached to each bond.

40— Fourth Liberty Loan $4\frac{1}{4}\%$ Gold Bonds of 1933-1938 Nos. K00565160, H00565158, G00565167, J00565159, and Dolo26184, each in the amount of \$1000, interest payable April 15 and October 15; with Interest Coupons Nos. 18 to 40, both inclusive, each in the amount of \$21.25, attached to each bond.

41— Bonds Nos. M7570 and M7571, Morris & Company, each for \$1000, $7\frac{1}{2}\%$ Ten-Year Sinking Fund Gold Note, principal due September 1, 1930, interest payable March 1 and September 1; with Interest Coupons Nos. 14 to 20, both inclusive, each in the sum of \$37.50, attached to each bond.

42— Bonds Nos. M 254, M 255, M 256, M 257, and M 258, Mortgage Insurance Corporation Insured First Mortgage Gold Certificate, Issue No. 18, 1927, 6%, each for \$1000, principal due February 1, 1934, interest payable August 1 and February 1; interest coupons Nos. 1 to 14, both inclusive, each in the amount of \$30.00, attached to each bond. [40]

43— Certificate No. 125 for 10 shares of the Preferred capital stock of Nicholls Grain & Milling Company, issued to W. A. Huff on April 24, 1924, par value \$100 per share.

44— Bonds Nos. 86 and 87, Delhi Drainage District, County of Orange, State of California, dated August 14, 1909, each for \$250, 5%, principal due January 1, 1930, interest payable January 1 and July 1; with interest coupons Nos. 36 to 41, both inclusive, each in the sum of \$6.25, attached to each bond.

(Trustee's Exhibit No. 1.)

45— Bonds Nos. 46, 47, and 48, United States of America, County of Orange, State of California, Newport Drainage District, dated November 1, 1910, 5%, each for \$150, Series No. 7, interest payable January 1 and July 1; principal due January 1, 1928; Interest Coupons Nos. 34 and 35 each for \$3.75 attached to each bond.

46— Bonds, Nos. 66, 67, 68, and 69, United States of America, County of Orange, State of California, Newport Drainage District, dated November 1, 1910, 5%, each for \$150, Series No. 8, interest payable January 1 and July 1; principal due January 1, 1929; Interest Coupons Nos. 34 to 37, both inclusive, each for \$3.75, attached to each bond.

47— Bonds Nos. 70, 71 and 72, United States of America, County of Orange, State of California, Newport Drainage District, dated November 1, 1910, 5%, Series No. 9, each for \$150; interest payable January 1 and July 1; principal due January 1, 1930; Interest Coupons Nos. 34 to 39, both inclusive, each for \$3.75, attached to each bond.

48— Bonds Nos. 85, 86, 87, and 88, United States of America, County of Orange, State of California, Newport Drainage District, dated November 1, 1910, 5%, Series No. 10, each for \$150; interest payable January 1 and July 1; principal due January 1, 1931; Interest Coupons Nos. 34 to 41, both inclusive, each for \$3.75, attached to each bond.

49— Certificate No. 116 for 16 shares of the Guarantee Capital Stock of the Orange Building & Loan Association, issued to W. A. Huff on January 22, 1926, par value \$200 per share.

(Trustee's Exhibit No. 1.)

50— Certificate No. 168 for 40 shares of the capital stock of the Orange County Title Company, issued to W. A. Huff and Edith Huff, his wife, as joint tenants with the right of survivorship, on November 9, 1917; par value \$100 per share.

51— Certificate No. 283 for 30 shares of the capital stock of The Peoples Finance & Thrift Company of Santa Ana, issued to W. A. Huff on February 13, 1924, par value \$100 per share.

52— Bonds Nos. M1395 and M1396, Pan American Petroleum & Transport Company, First Lien Ten Year [41] Marine Equipment 7% Convertible Gold Bond, for \$1000 each, due August 1, 1930; interest payable February 1 and August 1; Interest Coupons Nos. 14 to 20, both inclusive, each for \$35.00, attached to each bond.

53— Bond No. 42, Road District Improvement Bond, Road Improvement District No. 5, United States of America, State of California, County of Orange, for \$260, 7%, principal due October 4, 1927, interest payable January 2 and July 2; with Interest Coupons Nos. 12 and 13, for \$9.10 and \$4.65, respectively, attached.

54— Bond No. 49, United States of America, State of California, County of Orange, Road District Improvement Bond, Road Improvement District No. 5, for \$260, 7%, principal due October 4, 1928, interest payable January 2 and July 2; with interest Coupons Nos. 12 to 14, both inclusive, each for \$9.10, and Coupon No. 15 for \$4.65, attached.

55— Bond No. 56, United States of America, State of California, County of Orange, Road District Improvement Bond, Road Improvement District

(Trustee's Exhibit No. 1.)

No. 5, for \$260, 7%, principal due October 4, 1929, interest payable January 2 and July 2; with Interest Coupons Nos. 12 to 16, both inclusive, each for \$9.10, and Coupon No. 17 for \$4.65, attached.

56— Bond No. 63, United States of America, State of California, County of Orange, Road District Improvement Bond, Road Improvement District No. 5, for \$260, 7%, principal due October 4, 1930, interest payable January 2 and July 2; with Interest Coupons Nos. 12 to 18, both inclusive, each for \$9.10, and Interest Coupon No. 19 for \$4.65, attached.

57— Bond No. 70, United States of America, State of California, County of Orange, Road District Improvement Bond, Road Improvement District No. 5, for \$260, 7%, principal due October 4, 1931, interest payable January 2 and July 2; with Interest Coupons Nos. 12 to 20, both inclusive, each for \$9.10, and Interest Coupon No. 21 for \$4.65, attached.

58— Bond No. 77, United States of America, State of California, County of Orange, Road District Improvement Bond, Road Improvement District No. 5, for \$260, 7%, principal due October 4, 1932, interest payable January 2 and July 2; with Interest Coupons Nos. 12 to 22, both inclusive, each for \$9.10, and Interest Coupon No. 23 for \$4.65, attached.

59— Bond No. 84, United States of America, State of California, County of Orange, Road District Improvement Bond, Road Improvement District No. 5, for \$260, 7%, principal due October 4, 1933, interest payable January 2 and July 2; with Inter- [42] est Coupons Nos. 12 to 24, both inclu-

(Trustee's Exhibit No. 1.)

sive, each for \$9.10, and Interest Coupon No. 25 for \$4.65, attached.

60— Bond No. 91, United States of America, State of California, County of Orange, Road District Improvement Bond, Road Improvement District No. 5, for \$260, 7%, principal due October 4, 1934, interest payable January 2 and July 2; with Interest Coupons Nos. 12 to 26, both inclusive, each for \$9.10, and Interest Coupon No. 27 for \$4.65, attached.

61— Bond No. 98, United States of America, State of California, County of Orange, Road District Improvement Bond, Road Improvement District No. 5, for \$260, 7%, principal due October 4, 1935, interest payable January 2 and July 2; with Interest Coupons Nos. 12 to 28, both inclusive, each for \$9.10, and Interest Coupon No. 29 for \$4.65, attached.

62— Bond No. 102, United States of America, State of California, County of Orange, Road District Improvement Bond, Road Improvement District No. 5, for \$1000, 7%, principal due October 4, 1936, interest payable January 2 and July 2; with Interest Coupons Nos. 12 to 30, both inclusive, each for \$35.00, and Interest Coupon No. 31 for \$17.89, attached.

63— Bond No. 103, United States of America, State of California, County of Orange, Road District Improvement Bond, Road Improvement District No. 5, for \$1000, 7%, principal due October 4, 1936, interest payable January 2 and July 2; with Interest Coupons Nos. 12 to 30, both inclusive, each for \$35.00, and Interest Coupon No. 31 for \$17.89, attached.

(Trustee's Exhibit No. 1.)

64— Bond No. 104, United States of America, State of California, County of Orange, Road District Improvement Bond, Road Improvement District No. 5, for \$500, 7%, principal due October 4, 1936, interest payable January 2 and July 2; with Interest Coupons Nos. 12 to 30, both inclusive, each for \$17.50, and Interest Coupon No. 31 for \$8.94, attached.

65— Bond No. 105, United States of America, State of California, County of Orange, Road District Improvement Bond, Road Improvement District No. 5, for \$260, 7%, principal due October 4, 1936, interest payable January 2 and July 2; with Interest Coupons Nos. 12 to 30, both inclusive, each for \$9.10, and Interest Coupon No. 31 for \$4.65, attached.

66— Certificate No. NY—D 66007 for 100 shares of the capital stock of the Standard Oil Company of California, without nominal or par value, issued to William A. Huff on February 18, 1927. [43]

67— Certificate No. NY78110 for 100 shares of the common stock of Shell Union Oil Corporation, without nominal or par value, issued to William A. Huff on April 7, 1927.

68— Certificate No. 6 for 75 shares of the capital stock of Santora Land Co. issued to W. A. Huff on November 1, 1922, par value \$100 per share.

69— Certificate No. 24 for 15 shares of the capital stock of Santora Land Co. issued to W. A. Huff on November 1, 1922, par value \$100 per share.

70— Certificate No. 93 for 5 shares of the capital stock of Santa Ana Valley Hospital issued to W. A. Huff on October 2, 1923, par value \$100 per share.

(Trustee's Exhibit No. 1.)

71— Certificate of Membership in the Santa Ana Country Club, No. 124, issued to W. A. Huff,

72— Certificate No. A700 for 100 shares of the Preferred Series B 6% capital stock of the Southern California Edison Company, issued to W. A. Huff and Edith Huff as joint tenants with full rights of survivorship on April 28, 1926, par value \$25.00 each.

73— Certificate No. A701 for 100 shares of the Preferred Series B 6% capital stock of the Southern California Edison Company, issued to W. A. Huff and Edith Huff as joint tenants with full rights of survivorship on April 28, 1926, par value \$25.00 each.

74— Bonds Nos. 56, 57, 58, 59, and 60, State of California, Series B 6% Street Improvement Bond Certificate, non-callable, each for \$1000, principal due March 15, 1931, interest payable on March 15 and September 15; Interest Coupons Nos. 5 to 12, both inclusive, each for \$30.00, attached to each bond.

75— Certificate No. 193 for 10 shares, permanent, Non-withdrawable Guarantee, of the Capital Stock of Santa Ana Building and Loan Association, Santa Ana, California, issued to W. A. Huff or Edith Huff, either or the survivor, on April 23, 1925.

76— Certificate No. 352 for 35 shares of the Preferred Capital Stock of Southern Service Company, issued to W. A. Huff on March 11, 1922, par value \$100 per share.

77— Certificate No. 399 for 8 shares of the Preferred Capital Stock of Southern Service Company, issued to W. A. Huff on May 31, 1922, par value \$100 per share.

(Trustee's Exhibit No. 1.)

78— Certificate No. 651 for 2 shares of the Preferred Capital Stock of Southern Service Company, issued to W. A. Huff on March 4, 1924, par value \$100 per share. [44]

79— Certificate No. 881 for 4 shares of the Preferred Capital Stock of Southern Service Company, issued to W. A. Huff on May 21, 1925, par value \$100 per share.

80— Certificate No. 1168 for 7 shares of the Preferred Capital Stock of Southern Service Company, issued to W. A. Huff on July 1, 1926, par value \$100 per share.

81— Certificate No. 2 for 1 share of the capital stock of St. Ann's Inn issued to W. A. Huff on July 12, 1922, par value \$100 per share.

82— Certificate No. 72 for 34 shares of the capital stock of St. Ann's Inn issued to W. A. Huff on July 18, 1922, par value \$100 per share.

83— Bonds Nos. 55, 56, 57, 58, and 59, United States of America, State of California, Santa Ana School District of Orange County, each for \$1000, 5% principal due March 1, 1928, interest payable March 1 and September 1; with Interest Coupons Nos. 11 and 12, each for \$25.00, attached to each bond.

84— Certificate No. 176 for 409 shares of the capital stock of the Vanderlip Oil Company issued to W. A. Huff on June 6, 1901, par value \$1.00 per share.

85— Certificate No. 206 for 182 shares of the capital stock of the Vanderlip Oil Company issued to W. A. Huff on June 10, 1901, par value \$1.00 per share.

(Trustee's Exhibit No. 1.)

86— Certificate No. 314 for 50 shares of the capital stock of Western States Life Insurance Co. issued to W. A. Huff on February 14, 1910, par value \$10.00 per share.

87— Certificate No. 1187 for 50 shares of the capital stock of Western States Life Insurance Co. issued to W. A. Huff on April 29, 1910, par value \$10.00 per share.

88— Certificate No. P 1274 for 50 shares of the Preferred Capital Stock of Zellerbach Corporation issued to W. A. Huff and Edith Huff as joint tenants with right of survivorship but not tenants in common on March 29, 1926, without par value; redemption price per share \$120.00.

89— Certificate No. E 762 for 10 shares of the capital stock of The First National Bank of Santa Ana, issued to W. A. Huff on May 3, 1927, par value \$100 per share.

90— Promissory note for \$5000 dated June 24, 1925, due three years after date, executed by J. E. Cope and Mary C. Cope in favor of The Farmers & Merchants Savings Bank of Santa Ana, with interest at 7% per annum, payable semi-annually; secured [45] by a mortgage of even date and terms recorded June 27, 1925, in Volume 352, of Mortgages, page 195, Orange County Records.

91— Promissory note for \$10,000 dated September 18, 1926, due three years after date, executed by H. A. Lake and Edith M. Lake in favor of The Farmers & Merchants Savings Bank of Santa Ana, with interest at 7%, per annum, payable semi-annually; secured by a mortgage of even date and terms

(Trustee's Exhibit No. 1.)

recorded October 1, 1926, in Volume 386 of Mortgages, page 165, Orange County Records.

92— Promissory note for \$5000 dated May 4, 1925, due three years after date, executed by John H. Meyer and Katharine M. Meyer in favor of The Farmers & Merchants Savings Bank of Santa Ana, with interest at 7% per annum, payable semi-annually; secured by a mortgage of even date and terms recorded May 12, 1925, in Volume 349 of Mortgages, Page 112, Orange County Records.

93— Promissory note for \$7000 dated July 8, 1925, due three years after date, executed by Harry Woodington and Rella Woodington in favor of The Farmers & Merchants Savings Bank of Santa Ana, with interest at 7% per annum, payable semi-annually; secured by a mortgage of even date and terms recorded July 16, 1925, in Volume 353 of Mortgages, page 297, Orange County Records.

94— Promissory note for \$11,500 dated July 27, 1925, due three years after date, executed by Edward M. Blake and Mary Otis Blake, in favor of The Farmers & Merchants Savings Bank of Santa Ana, with interest at 7% per annum, payable semiannually; secured by a mortgage of even date and terms recorded August 1, 1925, in Volume 354 of Mortgages, page 187, Orange County Records.

95— Promissory note for \$15,000 dated June 15, 1925, due five years after date, executed by Victor

(Trustee's Exhibit No. 1.)

Walker and Mrs. Elva B. Walker in favor of The Farmers & Merchants Savings Bank of Santa Ana, with interest at 7% per annum, payable quarterly; secured by a mortgage of even date recorded June 16, 1925, in Volume 351 of Mortgages, page 200, Orange County Records.

96— Promissory note for \$9000 dated June 5, 1925, due three years after date, executed by Holmes Loan & Realty Company in favor of Grace G. Reid, with interest 7% per annum, payable semi-annually; secured by a mortgage of even date recorded June 17, 1925, in Volume 352 of Mortgages, page 74, Orange County Records. [46]

97— Promissory note for \$22,500 dated March 25, 1926, due three years after date, executed by Phillip Lutz and Rosa C. Lutz in favor of The Farmers & Merchants Savings Bank of Santa Ana, with interest at 7% per annum, payable semi-annually; secured by a mortgage of even date recorded March 27, 1926, in Volume 369, of Mortgages, Page 239, Orange County Records.

98 Certificate No. SF—C 27572 for 50 shares of the capital stock of Standard Oil Company of California, issued in the name of William A. Huff on April 23, 1927, without nominal or par value.

99— Assignment executed by W. A. Huff and Edith Huff, covering: "All moneys now on deposit, or which may hereafter be deposited to the credit of

(Trustee's Exhibit No. 1.)

us, or either of us, in The Farmers and Merchants Saving Bank of Santa Ana, Santa Ana, California."

100— Assignment executed by W. A. Huff and Edith Huff covering: "All our household goods, including pictures, silverware, rug and bric-a-brac, together with all our jewelry, clothing and personal effects, located in our home at 129 Buene Vista Boulevard, East Newport, California."

101— Assignment executed by W. A. Huff and Edith Huff covering: "All our household goods, including pictures, silverware, rug and bric-a-brac, together with all our jewelry and personal effects and clothing, located in our home at 316 Cypress Avenue, Santa Ana, California."

102— Bill of Sale executed by W. A. Huff covering: 1923 Model 90, Detroit-Electric Brougham with Motor Number S 13217; and 1926, Model 314, Cadillac 7 ps. Sub. with Motor Number M 100692.

103— Assignment of contract dated May 6, 1927, executed by W. A. Huff and Edith Huff as party of the first part, and H. J. Lowe as party of the second part, covering certain shares of stock in the W. A. Huff Company.

The foregoing described property, covered by Exhibit "A", is hereby made a part of the property held under Trust No. 245 (W. A. Huff), this 10th day of May, 1927.

THE FIRST NATIONAL BANK OF SANTA ANA.

By E. B. Sprague

(Seal) Assistant Trust Officer. [47]

(Trustee's Exhibit No. 1.)

EXHIBIT "A-1"

TO DECLARATION OF TRUST NO. 245,
W. A. HUFF AND EDITH HUFF, TRUSTORS,
THE FIRST NATIONAL BANK OF SANTA ANA,
TRUSTEE.

All that certain real property situated in the City of Santa Ana, County of Orange, State of California, described as follows:

Parcel 1.

1— Beginning at a point 75 feet North of the Southeast corner of Lot Nine (9) in Block "E" of "Blee's Second Addition to the Town of Santa Ana", as shown on a Map recorded in Book 30, page 75 of Miscellaneous Records of Los Angeles County, California; running thence West 150 feet to the East line of an alley; thence South 10 feet; thence East 150 feet to the West line of Cypress Avenue, and thence North 10 feet to the place of beginning, and being the North 10 feet of the South 75 feet of Lots Seven (7), Eight (8) and Nine (9) in said Block "E".

2— Commencing at a point 75 feet North of the Southeast corner of Lot Nine (9) in Block "E" of "Blee's Second Addition to the Town of Santa Ana", as shown on a Map recorded in Book 30, page 75 of Miscellaneous Records of Los Angeles County, California; running thence North along the West line of Cypress Avenue 50 feet; thence West 150 feet to the

(Trustee's Exhibit No. 1.)

East line of an alley; thence South 50 feet and thence East 150 feet to the place of beginning and being the North 50 feet of Lots 7, 8 and 9 in said Block "E".

3— The West 25 feet of Lots Eight (8) and Nine (9) in Block Eleven (11) of the "Town of Santa Ana", as shown on a Map recorded in Book 2, page 51 of Miscellaneous Records of Los Angeles County, California.

4— Commencing at a point 75 feet West of the Northeast corner of Block Eleven (11) of the Town (now City) of Santa Ana, as shown on a Map recorded in Book 2, page 51 of Miscellaneous Records of Los Angeles County, California, and running thence South 100 feet; thence West 25 feet; thence North 100 feet; thence East 25 feet to the point of beginning, it being a portion of Lots Eight (8) and Nine (9) in said Block Eleven (11).

5— Lot One (1) of the Subdivision of Block "A" of East Newport as shown on a Map recorded in Book 4, page 51 of Miscellaneous Maps, records of Orange County, California,

Parcel 2.

1— Beginning at the Southwest corner of Lot One (1) in Block Fourteen (14) of the "Town of Santa Ana", as shown on a Map recorded in Book 2, page 51 of Miscellaneous Records of Los Angeles County, California: running thence North along the West line of said Lot One (1) a distance of 50 feet; thence

(Trustee's Exhibit No. 1.)

West 24 feet; thence South 50 feet, and thence East 24 feet to the point of beginning.

Subject to agreements relative to construction and maintenance of sewer, recorded in Book 2, page 219 of Miscellaneous Records of Orange County, California, and in Book 2, page 221 of Miscellaneous Records of Orange County, California. [48]

2— The West 31 feet of Lots One (1) and Four (4) in Block Fourteen (14) of the "Town of Santa Ana", as shown on a Map recorded in Book 2, page 51 of Miscellaneous Records of Los Angeles County, California.

3— Commencing at the Southeast corner of Lot Three (3) in Block Fourteen (14) of the "Town of Santa Ana", as shown on a Map recorded in Book 2, page 51 of Miscellaneous Records of Los Angeles County, California; thence North 50 feet; Thence West 24 feet; thence South 50 feet, and thence East 24 feet to beginning.

Subject to a right of way for ingress and egress over a strip 6 feet wide off the North end thereof. Also subject to a right of way for sewer purposes not exceeding 8 feet in width, the center line of which is parallel to and 45 feet North of the South line of said Lot Three (3).

Also hereby conveying the right of way for ingress and egress over a strip of land 6 feet wide off the South side of Lot Six (6) in said Block Fourteen

(Trustee's Exhibit No. 1.)

(14) and over the North 6 feet of the West 101 feet of said Lot Three (3), conveyed to George W. Minter by deed recorded in Book 289, page 164 of Deeds, records of Orange County, California.

Also hereby conveying all interest of the Grantor in the wall described in the Agreement between W. A. Huff, party of the first part, and George W. Minter, W. A. Huff and Edith Huff, his wife, parties of the second part, recorded in Book 300, page 88 of Deeds, records of Orange County, California, and all interest of the Grantor in said Agreement.

Parcel 3.

Lots Two (2) and Three (3) and the South six (6) inches of Lot Six (6), all in Block Seven (7) of the Town of Santa Ana, as shown on a Map recorded in Book 2, page 51 of Miscellaneous Records of Los Angeles County, California, and in Book 5, page 46 of Miscellaneous Maps, records of Orange County, California.

Subject to a party wall agreement as recited in the deed from S. J. Jackman et ux to F. E. Farnsworth, recorded in Book 255, page 307 of Deeds, records of Orange County, California.

Parcel 4.

That portion of Lot Sixty-three (63) of Newport Heights, as per map thereof recorded in Book 4, page 83 of Miscellaneous Maps, Records of Orange County, California, described as follows:

(Trustee's Exhibit No. 1.)

Beginning at a point in the Northwestern line of said Lot 63, distant 91.29 feet Southwesterly from the most Northerly corner of said Lot; thence Southeasterly, parallel to the Northeasterly line of said Lot 63, 110 feet; thence Southwesterly, parallel to the Northwestern line of said Lot, 73.79 feet; thence Northwesternly, parallel to the Northeasterly line of said Lot 63, 110 feet to a point in said Northwesternly line of Lot 63; thence Northeasterly 73.79 feet to the point of beginning.

Reserving the Southwesterly $7\frac{1}{2}$ feet of said premises for road and alley purposes.

Subject to rights of way of record.

Also granting a right of way for road and alley purposes over the Southwesterly 15 feet of the Northeasterly 172.58 feet of said Lot 63. [49]

Also granting the Southeasterly one-half of Orange Avenue adjoining the above conveyed premises on the Northwest.

Also subject to unpaid taxes.

Parcel 5.

1— The West 105 feet of Lot Six (6) in Block Thirteen (13) of the Town of Santa Ana, as shown on a Map recorded in Book 2, page 51 of Miscellaneous Records of Los Angeles County, California.

2— Part of Lots Two (2) and Three (3) in Block Thirteen (13) of the said Town of Santa Ana, de-

Trustee's Exhibit No. 1.)

scribed as: Beginning on the North line of Fourth Street at a point $62\frac{1}{2}$ feet East of its intersection with the East Line of West Street; thence North at right angles to Fourth Street 100 feet to the North line of Lot Three (3); thence East on the North line of Lot Three (3), $42\frac{1}{2}$ feet; thence South 100 feet to the North line of Fourth Street, and thence West $42\frac{1}{2}$ feet to beginning.

3— Commencing at a point in the center of a brick wall 105 feet and $2\frac{3}{4}$ inches west of the South-east corner of Lot Two (2), Block Thirteen (13) of said Town of Santa Ana, as shown on a Map recorded in Book 2, page 51 of Miscellaneous Records of Los Angeles County, California, running thence North 100 feet to the North line of Lot Three (3) in said Block Thirteen (13), thence West 19 feet and $9\frac{1}{4}$ inches, more or less, to the Northwest corner of said Lot Three (3); thence South 100 feet along the West line of said Lots Three (3) and Two (2); thence East 19 feet and $9\frac{1}{4}$ inches, more or less, to the point of beginning.

Subject to a right of way for sewer as conveyed by L. Gildmacher to the City of Santa Ana by deed recorded in Book 195, page 117 of Deeds, records of Orange County, California.

The above described real property, covered by Exhibit "A-1", is hereby made a part of the trust property held under Trust No. 245 (Huff).

Dated this 10th day of May, 1927.

THE FIRST NATIONAL BANK OF SANTA ANA

By E. B. Sprague

(SEAL) Asst Trust Officer [50]

(Trustee's Exhibit No. 1.)

EXHIBIT "A-2" TO

DECLARATION OF TRUST NO. 245,
W. A. HUFF AND EDITH HUFF, TRUSTORS,
THE FIRST NATIONAL BANK OF SANTA ANA,
TRUSTEE.

The following described personal property has been delivered to the Trustee to be held in trust for the Trustors:

1— Bonds Nos. 2392 and 2400 of the State of California, County of Nevada, Nevada Irrigation District, Series No. 18, 5½% Serial Gold Bond, each for \$1000, principal due July 1, 1953, interest payable January 1 and July 1; with Interest Coupons Nos. 4 to 56, both inclusive, each in the amount of \$27.50, attached to each bond.

2— Bonds Nos. 5781, 5782, and 5783 of the State of California, County of Nevada, Nevada Irrigation District, Series No. 30, 5½% Serial Gold Bond, each for \$1000, principal due July 1, 1965, interest payable January 1 and July 1; with Interest Coupons Nos. 4 to 80, both inclusive, each in the amount of \$27.50, attached to each bond.

The above described personal property, covered by Exhibit "A-2", is hereby made a part of the trust property held under Declaration of Trust No. 245 (W. A. Huff).

Dated this 12th day of May, 1927.

THE FIRST NATIONAL BANK OF SANTA ANA
(SEAL) By E. B. Sprague

Assistant Trust Officer. [51]

(Trustee's Exhibit No. 1.)

TO THE FIRST NATIONAL BANK OF SANTA
ANA, TRUST DEPARTMENT:

Further instructions regarding assignment of our Bank Account, of which a copy *if* hereto attached, same is subject to our drawing checks on said account, the assignment to take effect according to the provisions contained in a certain Declaration of Trust No. 245 (W. A. Huff), whereby The First National Bank of Santa Ana is Trustee and W. A. Huff and Edith Huff are Trustors, and you are instructed not to withdraw any of said moneys until after the death of W. A. Huff; and said The First National Bank of Santa Ana, and the Trust Department thereof, are hereby released from all liability on account of the payment of any checks which we may draw on said account up until the time of the death of said W. A. Huff, or until we turn said balance over to you by check.

Dated this 10th day of May, 1927.

"W. A. Huff"

"Edith Huff"

The foregoing instructions were deposited with us the 10th day of May, 1927.

THE FIRST NATIONAL BANK OF SANTA ANA.
(SEAL) By E B Sprague
Asst. Trust Officer. [52]

(Trustee's Exhibit No. 1.)

AMENDMENT TO DECLARATION OF TRUST
NO. 245, W. A. HUFF, DATED THE 10th, DAY
OF MAY, 1927, WHEREBY THE FIRST NA-
TIONAL BANK OF SANTA ANA IS NAMED
TRUSTEE AND W. A. HUFF AND EDITH
HUFF ARE NAMED AS TRUSTORS.

Whereas, subdivision "First" of paragraph 2 reads as follows:

"First: To S. E. HUFF, brother of the said Trustor, W. A. Huff, the sum of Ten Thousand Dollars (\$10,000). Should said S. E. Huff not be living, then said Ten Thousand Dollars (\$10,000) shall become a part of the residue of the trust estate and distributed as hereinafter provided."; and

Whereas, this Amendment to Trust No. 245 made this date, shall provide that subdivision "First" of paragraph 2 of said Trust No. 245 shall become null and void and shall be effective from this day and date.

Whereas, subdivision "B" of paragraph 3 of said Trust No. 245 reads as follows:

"B—The net income available for distribution from the other part of the trust estate, after deducting the amounts if any, as hereinbefore provided to be paid to Edith Huff, shall be distributed in the following manner:

One-third thereof to S. E. Huff, brother of the Trustor, W. A. Huff, until the death of said Edith Huff, the other Trustor herein named. Should the said S. E. Huff not be surviving or die before the death of said Edith Huff, then from said one-third there shall be paid, provided, said income will permit, the sum of One Hundred Dollars (\$100) a month to the wife of S. E. Huff, pro-

(Trustee's Exhibit No. 1.)

vided she is then living. And any income in excess of One Hundred Dollars (\$100) a month shall be distributed to the said Edith Huff, the other Trustor herein named as long as she shall live.

One-third thereof to Helen Parke, daughter of C. S. Huff, deceased brother W. A. Huff, one of the Trustors herein, until the death of said Edith Huff, the other Trustor herein. Should said Helen Parke not be surviving or die before the death of said Edith Huff, then that part of the income that would have been distributed to her shall be distributed in the following manner: The Trustee shall divide said income among the bodily issue of said Helen Parke per stirpes, provided they have attained the age of eighteen years. Should any of said bodily issue of said Helen Parke not have attained the age of eighteen years, then that part of the income that would have been distributed to them, should they have attained the age of eighteen years, shall be used by said Trustee towards the maintenance and education of said bodily issue not having attained the age of eighteen years; and the remainder thereof, if any, shall be deposited in a savings account for the benefit of said bodily issue who shall not have attained the age of eighteen years, and the income accumulated thereon and distributed to said bodily issue at such time as said bodily issue attain the age of eighteen years respectively; [53] but notwithstanding anything to the contrary herein, same shall terminate on the death of said Edith Huff.

Should there be no bodily issue of said Helen Parke surviving, then the part of the income that would have been distributed to them shall be distributed to her sister, Ethel Huff; should said Ethel Huff not be surviving but

(Trustee's Exhibit No. 1.)

be survived by bodily issue, then the Trustee shall divide said income among the bodily issue of said Ethel Huff per stirpes, provided they have attained the age of eighteen years. Should any of said bodily issue of said Ethel Huff not have attained the age of eighteen years, then from that part of the income that would have been distributed to them, should they have attained the age of eighteen years, shall be used by said Trustee towards the maintenance and education of said bodily issue not having attained the age of eighteen years; and the remainder thereof, if any, shall be deposited in a savings account for the benefit of said bodily issue, who shall not have attained the age of eighteen years, and the income accumulated thereon and distributed to said bodily issue at such time as said bodily issue attain the age of eighteen years respectively; but notwithstanding anything to the contrary herein, same shall terminate on the death of said Edith Huff.

Should said Helen Parke not be surviving and not be survived by bodily issue, or by said Ethel Huff, or by bodily issue of said Ethel Huff, then said part of the income shall be distributed to said Edith Huff as long as she shall live.

One-third thereof to Ethel Huff, daughter of C. S. Huff, deceased brother of W. A. Huff, one of the Trustors herein, until the death of said Edith Huff, the other Trustor herein. Should said Ethel Huff not be surviving or die before the death of said Edith Huff, then that part of the income that would have been distributed to her shall be distributed in the following manner:

The Trustee shall divide said income among the bodily issue of said Ethel Huff per stirpes, provided they have

(Trustee's Exhibit No. 1.)

attained the age of eighteen years. Should any of said bodily issue of said Ethel Huff not have attained the age of eighteen years, then from that part of the income that would have been distributed to them, should they have attained the age of eighteen years, shall be used by said Trustee towards the maintenance and education of said bodily issue not having attained the age of eighteen years; and the remainder thereof, if any, shall be deposited in a savings account for the benefit of said bodily issue not yet eighteen years of age, and the income accumulated thereon and distributed to said bodily issue at such time as said bodily issue attain the age of eighteen years respectively; but notwithstanding anything to the contrary herein, same shall terminate on the death of said Edith Huff.

Should there be no bodily issue of said Ethel Huff surviving, then the part of the income that would have been distributed to them shall be distributed to her sister, Helen Parke; or in the event of her death as provided for, for distribution of her income.

Should said Ethel Huff not be surviving and not be survived by bodily issue, or by said Helen Parke, or by bodily issue of said Helen Parke, then said part of the income shall be distributed to said Edith Huff as long as she shall live." ; and [54]

Whereas, this Amendment to Trust No. 245 made this date shall provide that subdivision "B" of paragraph 3 of said trust No. 245 shall become null and void and in place thereof, the following paragraph shall be known as "B" of original paragraph 3 and shall be effective from this day and date.

B—The net income available for distribution from the other part of the trust estate, after deducting the amounts,

(Trustee's Exhibit No. 1.)

if any, as hereinbefore provided to be paid to Edith Huff, shall be distributed in the following manner:

One-third thereof to S. E. Huff, brother of the Trustor, W. A. Huff, until the death of said Edith Huff, the other Trustor herein nanted, provided the said S. E. Huff is surviving. Should the said S. E. Huff not be surviving or die before the death of Edith Huff, then from said one-third there shall be paid, provided said income will permit, the sum of Two Hundred Fifty Dollars (\$250) a month to the wife of said S. E. Huff as long as said Edith Huff shall live, and any income in excess of Two Hundred Fifty Dollars (\$250.00) a month shall be distributed to the said Edith Huff, the other Trustor herein named as long as she shall live.

One-third thereof to Helen Parke, daughter of C. S. Huff, deceased brother of W. A. Huff, one of the Trustors herein, until the death of said Edith Huff, the other Trustor herein. Should said Helen Parke not be surviving or die before the death of said Edith Huff, then that part of the income that would have been distributed to her shall be distributed in the following manner: The Trustee shall divide said income among the bodily issue of said Helen Parke per stirpes, provided they have attained the age of eighteen years. Should any of said bodily issue of said Helen Parke not have attained the age of eighteen years, then that part of the income that would have been distributed to them, should they have attained the age of eighteen years, shall [55] be used by said Trustee towards the maintenance and education of said bodily issue not having attained the age of eighteen years; and the remainder thereof, if any, shall be deposited in a savings account for the benefit of said bodily issue who shall not

(Trustee's Exhibit No. 1.)

have attained the age of eighteen years, and the income accumulated thereon and distributed to said bodily issue at such time as said bodily issue attain the age of eighteen years respectively: but notwithstanding any to the contrary herein, same shall terminate on the death of said Edith Huff.

Should there be no bodily issue of said Helen Parke surviving, then the part of the income that would have been distributed to them shall be distributed to her sister, Ethel Huff; should said Ethel Huff not be surviving but be survived by bodily issue, then the Trustee shall divide said income among the bodily issue of said Ethel Huff per stirpes, provided they have attained the age of eighteen years. Should any of said bodily issue of said Ethel Huff not have attained the age of eighteen years, then from that part of the income that would have been distributed to them, should they have attained the age of eighteen years, shall be used by said Trustee towards the maintenance and education of said bodily issue not having attained the age of eighteen years; and the remainder thereof, if any, shall be deposited in a savings account for the benefit of said bodily issue, who shall not have attained the age of eighteen years, and the income accumulated thereon and distributed to said bodily issue at such time as said bodily issue attain the age of eighteen years respectively; but notwithstanding anything to the contrary herein, same shall terminate on the death of said Edith Huff.

Should said Helen Parke not be surviving and not be survived by bodily issue, or by said Ethel Huff, or by bodily issue of said Ethel Huff, then said part of the income shall be distributed to said Edith Huff as long as she shall live. [56]

(Trustee's Exhibit No. 1.)

One-third thereof to Ethel Huff, daughter of C. S. Huff deceased brother of W. A. Huff, one of the Tru-
stors herein, until the death of said Edith Huff, the other
Trustor herein. Should said Ethel Huff not be surviving
or die before the death of said Edith Huff, then that part
of the income that would have been distributed to her
shall be distributed in the following manner: The Trustee
shall divide said income among the bodily issue of said
Ethel Huff per stirpes, provided they have attained the
age of eighteen years. Should any of said bodily issue
of said Ethel Huff not have attained the age of eighteen
years, then from that part of the income that would have
been distributed to them, should they have attained the age
of eighteen years, shall be used by said Trustee towards
the maintenance and education of said bodily issue not
having attained the age of eighteen years; and the re-
mainder thereof, if any, shall be deposited in a savings
account for the benefit of said bodily issue not yet eight-
een years of age, and the income accumulated thereon and
distributed to said bodily issue at such time as said bodily
issue attain the age of eighteen years respectively; but
notwithstanding anything to the contrary herein, same
shall terminate on the death of said Edith Huff.

Should there be no bodily issue of said Ethel Huff sur-
viving, then the part of the income that would have been
distributed to them shall be distributed to her sister, Helen
Parke; or in the event of her death as provided for, for
distribution of her income.

Should said Ethel Huff not be surviving and not be
survived by bodily issue, or by said Helen Parke, or by
bodily issue of said Helen Parke, then said Part of the
income shall be distributed to said Edith Huff as long as
she shall live.

(Trustee's Exhibit No. 1.)

And Whereas, subdivision "First" of paragraph 5 of said Trust No. 245 reads as follows: [57]

"First: One-third thereof to S. E. Huff, brother of the Trustor, W. A. Huff, provided he is surviving. If he is not surviving but is survived by a wife, then said one-third shall be held in trust and from the net income thereof there shall be paid the sum of One Hundred Dollars (\$100) a month to his wife, provided she is then living; and the remainder of the net income available for distribution from said one-third shall be distributed, share and share alike, to said Helen Parke and Ethel Huff, daughters of said C. S. Huff, deceased brother of the Trustor, W. A. Huff, as long as the said wife of said S. E. Huff shall live. Following the death of said wife of said S. E. Huff, said one-third shall be distributed equally to said Helen Parke and Ethel Huff.

Should said S. E. Huff not be surviving and not be survived by a wife, the said one-third to be distributed to him shall be distributed to said Helen Parke and Ethel Huff, daughters of C. S. Huff, deceased brother of said Trustor, W. A. Huff, share and share alike. If either said Helen Parke or Ethel Huff should not then be living, then the share that would have been distributed to her, had she been living, shall be distributed to her bodily issue per stirpes; if no bodily issue of said Helen Parke or Ethel Huff so dying should be surviving, then said share shall go to the survivor of said Helen Parke or Ethel Huff. Should neither said Helen Parke or Ethel Huff be surviving and no bodily issue of theirs surviving, then said part of the trust estate that would have been

Trustee's Exhibit No. 1.)

distributed to them shall be distributed to the heirs of Edith Huff, one of the Trustors herein, according to the then existing statutes of succession of the State of California.”; and

Whereas, this Amendment to Trust No. 245 made this date shall provide that subdivision “First” of paragraph 5 of said Trust No. 245 shall become null and void and in place thereof the following paragraph shall be known as sub-paragraph “First” of original paragraph 5 and shall become effective from this day and date.

First: Should said S. E. Huff, brother of the Trustor, or his wife survive the said Edith Huff, one of the Trustors herein named, then one-third thereof shall remain in the hands of the Trustee in trust and the net income therefrom shall be distributed to S. E. Huff, brother of the Trustor, as long as he shall live, with the provision that should the net income available for distribution not average Two Hundred Fifty Dollars (\$250) any one month, the Trustee may and is hereby authorized to use sufficient amount of the principal of said one-third so held in trust in addition to the income so as to pay to said S. E. Huff a yearly amount equal to Two Hundred Fifty Dollars (\$250) a month. [58]

Following the death of S. E. Huff, should he be survived by a wife, there shall be paid from the income of said trust estate so held as provided in this subdivision First, a sum to equal Two Hundred Fifty Dollars (\$250) a month to the said wife of S. E. Huff as long as she shall live, and should the net income not be sufficient to permit the Trustee to pay Two Hundred Fifty Dollars (\$250) a month to the said wife of S. E. Huff, the Trustee may and is hereby authorized to use sufficient amount

(Trustee's Exhibit No. 1.)

of the principal in addition to the income so as to pay the sum of Two Hundred Fifty Dollars (\$250) a month provided said trust estate will permit, and the remainder of the net income available for distribution from said one-third shall be distributed share and share alike to the said Helen Parke and Ethel Huff, daughters of C. S. Huff, deceased brother of the Trustor, W. A. Huff.

Following the deaths of S. E. Huff and his wife, said one-third so held, or the remainder thereof, shall be distributed equally to said Helen Parke and Ethel Huff, daughters of said C. S. Huff, deceased. Should S. E. Huff not be surviving at the time of the death of Edith Huff, one of the Trustors herein named, and not be survived by a wife, then the one-third of the trust estate as referred to in this subdivision first of paragraph 5 shall be distributed to Helen Parke and Ethel Huff, daughters of C. S. Huff, deceased brother of the said Trustor, W. A. Huff, share and share alike. If either said Helen Parke or Ethel Huff should not then be living, then the share that would have been distributed to her, had she been living, shall be distributed to her bodily issue per stirpes; if no bodily issue of said Helen Parke or Ethel Huff so dying should be surviving, then said share shall go to the survivor of said Helen Parke or Ethel Huff. Should neither said Helen Parke or Ethel Huff be surviving and no bodily issue of theirs surviving, then said part of the trust estate that would have been distributed to them shall be distributed to the [59] heirs of Edith Huff, one of the Trustors herein, according to the then existing statutes of succession of the State of California.

In Witness Whereof, said The First National Bank of Santa Ana, in its capacity as Trustee, has caused this in-

(Trustee's Exhibit No. 1.)

strument to be executed by its proper officer thereunto duly authorized, under its corporate seal, this 3rd day of July, 1928.

THE FIRST NATIONAL BANK OF SANTA ANA

By C. L. Pritchard Trust Officer.

(Seal) Trustee.

We, the undersigned, named in said Declaration of Trust No. 245 as Trustors, do hereby approve, ratify and confirm this Amendment to said Declaration of Trust No. 245, and we do hereby agree to be bound by all the terms thereof.

Dated this 3rd day of July, 1928.

W. A. Huff

Edith Huff

Trustors [60]

State of California,
County of Orange.—ss.

On this 3rd day of July, 1928, before me, E. Virginia Craig, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared C. L. Pritchard, known to me to be the Trust Officer of the corporation described in and that executed the within instrument, and known to me to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

Witness my hand and official seal.

E. Virginia Craig

Notary Public in and for
said County and State.

(Notarial Seal)

(Trustee's Exhibit No. 1.)

State of California,
County of Orange—ss.

On this 3rd day of July, 1928, before me, E. Virginia Craig a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared W. A. Huff and Edith Huff, known to me to be the persons described in and whose names are subscribed to the within instrument, and they acknowledged to me that they executed the same.

Witness my hand and official seal.

E. Virginia Craig
Notary Public in and for
said County and State.

(Notarial Seal) [61]

AMENDMENT TO DECLARATION OF TRUST
NO. 245, (W. A. Huff).

Know All Men by These Presents:

That Whereas, there was duly executed under date of May 10, 1927, a certain Declaration of Trust whereby The First National Bank of Santa Ana, Santa Ana, California, a national banking corporation, was named Trustee and W. A. Huff and Edith Huff, his wife, were named Trustors; and

Whereas, that said Declaration of Trust provides in paragraph twelve thereof that the Trustors, W. A. Huff and Edith Huff, reserved unto themselves the right to amend said trust in whole or in part; and

Whereas, the Trustors herein named wish to authorize the said Trustee to lease or mortgage said trust property for a longer period than the life of the trust;

(Trustee's Exhibit No. 1.)

Now, Therefore, the Trustee is given authority to mortgage or lease real property belonging to said trust estate during the time it manages said trust estate or any part thereof for a time beyond the existence of this trust.

In Witness Whereof, said The First National Bank of Santa Ana, in its capacity as Trustee, has caused this instrument to be executed by its proper officer thereunto duly authorized under its corporate seal, this 18th day of February, 1927.

THE FIRST NATIONAL BANK OF SANTA ANA.

By C. L. Pritchard

(seal) Trust Officer [62]

We, the undersigned, named in the foregoing Amendment to Declaration of Trust No. 245 (W. A. Huff), do hereby approve, ratify and confirm the same in all its parts, and we do hereby agree respectively to be bound by all the terms thereof.

Dated this 18th day of February, 1927.

W. A. Huff

Edith Huff

State of California,
County of Orange.—ss.

On this 18th day of February, 1927, before me, E. Virginia Craig, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared C. L. Pritchard, known to me to be the Trust Officer of the corporation described in and that executed the within instrument, and acknowledged that such corporation executed the same.

(Trustee's Exhibit No. 1.)

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

E. Virginia Craig
Notary Public in and for
said County and State.

(seal)

State of California,
County of Orange.—ss.

On this 18th day of February, 1927, before me, E. Virginia Craig, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared W. A. Huff and Edith Huff, his wife, known to me to be the persons described in and whose names are subscribed to the within instrument, and they acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

E. Virginia Craig
Notary Public in and for
said County and State.

(seal) [63]

Amendment to Declaration of Trust No. 245 W. A. Huff dated May 10th, 1927 Whereby The First National Bank of Santa Ana is named Trustee and W. A. Huff and Edith Huff are named as Trustors.

Whereas, Opening Paragraph of Original Paragraph 2 covering lines 9 to 18 inclusive page 2 of Original Trust Reads as follows:

(Trustee's Exhibit No. 1.)

That following the death of W. A. Huff, one of the Trustors herein named, providing there remain in the hands of the Trustee sufficient amounts of the Trust Estate to permit is so to do, there shall first be paid by the trustee the funeral expenses, expenses of last illness and just debts if the Trustor, W. A. Huff, and there shall then be distributed to Edith Huff, the other Trustor herein named, all the household furniture and fixtures, and automobiles, together with the personal effects of the said Trustor W. A. Huff, (Provided an assignment of same has been made to the Trustee and still remains in its Hands)

Whereas, this Amendment to Trust No. 245 made this date shall provide that Opening Paragraph of Original Paragraph 2 of said Trust No. 245 covering lines 9 to 10 inclusive page 2 of Original Trust shall become null and void and in place thereof, the following paragraph shall be known as Opening Paragraph of Original Paragraph 2 and shall be effective from this day and date.

That following death of W. A. Huff, one of the Trustors herein named, provided there remains in the hands of the Trustee sufficient amounts of the Trust Estate to permit it so to do, there shall first be paid by the Trustee the funeral expenses, expenses of last illness and just debts of the Trustor, W. A. Huff including the purchasing of section in Mausoleum in Fairhaven Cemetery, Orange Co. Calif. sufficient for remains of deceased Father and Mother of said W. A. Huff and for remains of both said Trustors, and to include from Trust Estate the cost of removing remains of deceased mother and father of said W. A. Huff from the present burial place to said Mausoleum, and to be retained by said Trustee herein named The sun of

(Trustee's Exhibit No. 1.)

Twenty Five Hundred Dollars in trust by said First National Bank of Santa Ana so long as any of the herein-after specifically named Beneficiaries shall live (It being the *beneficies* specifically named in trust No. 245) and after deaths of all specifically named *beneficies* said sum of Twenty Five Hundred shall be continued in trust with the Fairhaven Cemetery Assoc. or its successors. Sais Trust Fund to be known as The Huff Flower Fund Trust, and the net income therefrom shall be used in purchasing flowers to be placed on tombs of the said W. A. Huff and Edith Huff and deceased Mother and Father of said W. A. Huff from such time as their remains shall be placed in Mausoleum as above provided for. Flowers to be placed on each tomb of above named from such time as they are placed in said Mausoleum at least once a week, and if possible on Sunday morning of each week. And as soon as can be done the Trustee shall distribute to Edith Huff the other trustor herein named, all the household furniture, Automobiles, Clothing, Jewelry (including Diamonds) of the said Trustor W. A. Huff (Provided *as* assignment of same has been made to the Trustee and still remain in its hands).

In Witness Whereof, Said The First National Bank of Santa Ana, in its capacity as Trustee, has caused this instrument to be executed by its proper officer thereunto duly authorized under its corporate seal this 20th day of October 1928.

The First National Bank of Santa Ana,
By "C. L. Pritchard" Trust Officer.

(Corporate Seal) [64]

(Trustee's Exhibit No. 1.)

We, the undersigned, named in the foregoing Amendment to Declaration of Trust No. 245 (W. A. Huff), do hereby approve, ratify and confirm the same in all its parts, and we do hereby agree respectively to be bound by all the terms thereof. Dated this 20th day of October.

“W. A. Huff”

“Edith Huff” [65]

AMENDMENT TO DECLARATION OF TRUST
NO. 245, (W. A. HUFF).

Know All Men By These Presents:

That Whereas, there was duly executed under date of May 10, 1927, a certain Declaration of Trust whereby The First National Bank of Santa Ana, Santa Ana, California, a national banking corporation, was named Trustee and W. A. Huff and Edith Huff, his wife, were named Trustors; and

Whereas, on January 7, 1929, paragraph four was amended by Edith Huff, one of the Trustors named under Trust No. 245, in accordance with the provisions of said trust, giving her the right to amend said trust as to paragraph four; and

Whereas, This amendment is hereby made that in addition to the Amendment of paragraph four as made this 7th day of January, 1929, it is provided as a condition of the distribution of paragraph four as amended, control-

(Trustee's Exhibit No. 1.)

ling all other provisions thereof and anything to the contrary therein notwithstanding, that the trust as provided for under paragraph four as amended shall terminate and end immediately upon the deaths of said Edith Huff and all the specifically named Beneficiaries under paragraph four as amended, who shall be alive at the date of the execution of said trust, and at said time the Trustee shall distribute all the principal or corpus of that part of the trust estate as provided for distribution under paragraph four as amended this 7th day of January, 1929, in its hands to the persons entitled thereto as provided therein.

In Witness Whereof, said The First National Bank of Santa Ana, in its capacity as Trustee, has caused this instrument to be executed by its proper officer thereunto duly authorized, under its corporate seal, this 7th day of January, 1929.

THE FIRST NATIONAL BANK OF SANTA ANA.

By C. L. Pritchard, Trust Officer.

Trustee [66]

I, the undersigned, surviving Trustor, named in said Declaration of Trust No. 245, do hereby approve, ratify and confirm this Amendment to said Declaration of Trust No. 245 and I do hereby agree to be bound by all the terms thereof.

Dated this 7th day of January, 1929.

Edith Huff [67]

(Trustee's Exhibit No. 1.)

AMENDMENT TO DECLARATION OF TRUST
NO. 245, W. A. HUFF, DATED THE 10th DAY
OF MAY, 1927, WHEREIN THE FIRST NA-
TIONAL BANK OF SANTA ANA IS NAMED
TRUSTEE AND W. A. HUFF and EDITH
HUFF ARE NAMED TRUSTORS.

WHEREAS, paragraph four of said declaration of trust reads as follows:

"Following the death of said Edith Huff, one of the Trustors herein named, from that part of the trust estate referred to as "A" under paragraph three then remaining in the hands of the Trustee the Trustee shall pay her funeral expenses and expenses of last illness and legal debts, and thereafter there shall first be paid the sum of Five Thousand Dollars (\$5000) to the Christian Church of Santa Ana, California. The remainder of the trust estate held under "A" of paragraph three shall remain in the hands of the Trustee as long as Ella Whitted, sister of said Edith Huff, shall live, and as long thereafter until Jane Whitted, greatniece of said Edith Huff, has attained the age of twenty-one years. Should said Ella Whitted not live until said Janes Whitted has attained the age of twenty-one years, then said trust estate shall remain in the hands of the Trustee until said Jane Whitted has attained the age of twenty-one years, or should the said Ella Whitted die and the said Jane Whitted not live to attain the age of twenty-one years then the trust estate shall be held in trust until such time as the said Jane Whitted would have attained, the age of twenty-one years

(Trustee's Exhibit No. 1.)

should she have lived, provided that any of the herein specifically named Beneficiaries, who shall be alive at the creation of this trust, be living.

"The net income of the trust estate held under "A" of paragraph three shall be distributed as follows:

"First: To said Ella Whitted the sum of One Hundred Fifty Dollars (\$150) monthly during her life.

"Second: To Jack Whitted, Margaret Whitted, Milo Mitchell, Gladys Mitchell, and Eileen Beaty, greatnephews and greatnieces of the said Trustor, Edith Huff, the sum of Fifty Dollars (\$50.00) a month each, until the termination of this trust.

"Third: The sum of Fifty Dollars (\$50.00) a month of said income shall be distributed and accumulated by the Trustee in the following manner: Ten Dollars (\$10.00) thereof shall be used by the said Trustee towards the maintenance and education of Donald Whitted, son of Rex Whitted, nephew of the Trustor, Edith Huff, until he attains the age of eight years. Fifteen Dollars (\$15.00) a month shall be used by the said Trustee towards the maintenance and education of said Donald Whitted from the time he attains the age of eight years until he attains the age of twelve years. Twenty-five Dollars (\$25.00) a month shall be used by the said Trustee towards the maintenance and education of said Donald Whitted from the time he attains the age of twelve years [68] until he attains the age of sixteen years. Fifty Dollars (\$50.00) a month shall be used by the said

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Trustee towards the maintenance and education of said Donald Whitted from the time he attains the age of sixteen years until he attains the age of twenty-one years, provided he attends a high school, college or university; if he does not attend a high school, college or university, said Fifty Dollars (\$50.00) a month shall be deposited in a savings account and the interest accumulated and paid to him when he attains the age of twenty-one years.

"The balance of the Fifty Dollars (\$50.00) a month as hereinbefore provided shall be deposited in a savings account and the income accumulated until said Donald Whitted attains the age of sixteen years when the sums so accumulated in a savings account, including the earnings thereon, shall be used towards the maintenance and education of said Donald Whitted, provided he attends a high school, college or university. If he does not attend a high school, college or university, said sums are to be accumulated and paid to him when he attains the age of twenty-one years.

"Should said Donald Whitted not live to attain the age of twenty-one years but be survived by bodily issue, then the said amounts as hereinbefore provided to be paid to him or accumulated for him shall be distributed to his bodily issue per stirpes. Should he not live to attain the age of twenty-one years and not be survived by bodily issue, then the amounts hereinbefore provided to be paid to him or accumulated for him shall become a part of the net income of that part of the trust estate referred to as

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"A" of paragraph three and shall be distributed as hereinafter provided under subdivision sixth of this paragraph four.

"Fourth: The sum of Fifty Dollars (\$50.00) a month of the net income shall be distributed and accumulated by the said Trustee in the following manner: Twenty-five Dollars (\$25.00) a month thereof shall be used by the said Trustee towards the maintenance and education of Jane Whitted, great-niece of said Trustor, Edith Huff, until said Jane Whitted has attained the age of sixteen years; Fifty Dollars (\$50.00) a month shall be used by the Trustee towards the maintenance and education of said Jane Whitted from the time she attains the age of sixteen years until she attains the age of twenty-one years, provided she attends a high school, college or university; if she does not attend a high school, college or university, said Fifty Dollars (\$50.00) a month shall be deposited in a savings account and the interest accumulated and paid to her when she has attained the age of twenty-one years. The balance of the Fifty Dollars (\$50.00) a month as hereinbefore provided shall be deposited in a savings account for her benefit and the income accumulated until the said Jane Whitted attains the age of sixteen years when the sums so accumulated in a savings account, including the earnings thereon, shall be used towards the maintenance and education of said Jane Whitted, provided she attends a high school, college or university; if she does not attend a high school, college or university, said sums are to be accumulated and

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paid to her when she [69] attains the age of twenty-one years.

"Should said Jane Whitted not live to attain the age of twenty-one years but be survived by bodily issue, then the said amounts as hereinbefore provided to be paid to her or accumulated for her shall be distributed to her bodily issue per stirpes. Should she not live to attain the age of twenty-one years and not be survived by bodily issue, then the amounts hereinbefore provided to be paid to her or accumulated for her shall become a part of the net income of that part of the trust estate referred to as "A" of paragraph three and shall be distributed as hereinafter provided under subdivision sixth of this paragraph four.

"Fifth: The sum of Fifty Dollars (\$50.00) a month *for* the net income shall be distributed and accumulated by the said Trustee in the following manner: Twenty-five Dollars (\$25.00) a month thereof shall be used by the said Trustee towards the maintenance and education of Billy Whitted, great-nephew of the said Trustor, Edith Huff, until said Billy Whitted has attained the age of sixteen years; Fifty Dollars (\$50.00) a month shall be used by the Trustee towards the maintenance and education of said Billy Whitted from the time he attains the age of sixteen years until he attains the age of twenty-one years, provided he attends a high school, college or university, if he does not attend a high school, college or university, said Fifty Dollars (\$50.00) a month shall be deposited in a savings account and

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the interest accumulated and paid to him when he has attained the age of twenty-one years. The balance of the Fifty Dollars (\$50.00) a month as hereinbefore provided shall be deposited in a savings account for his benefit and the income accumulated until the said Billy Whitted attains the age of sixteen years when the sums so accumulated in a savings account, including the earnings thereon, shall be used towards the maintenance and education of said Billy Whitted, provided he attends a high school, college or university; if he does not attend a high school, college or university, said sums are to be accumulated and paid to him when he attains the age of twenty-one years.

"Should said Billy Whitted not live to attain the age of twenty-one years but be survived by bodily issue, then the said amounts as hereinbefore provided to be paid to him or accumulated for him shall be distributed to his bodily issue per stirpes. Should he not live to attain the age of twenty-one years and not be survived by bodily issue, then the amounts hereinbefore provided to be paid to him or accumulated for him shall become a part of the net income of that part of the trust estate referred to as "A" of paragraph three and shall be distributed as hereinafter provided under subdivision sixth of this paragraph four.

"Sixth: The remainder of the net income of that part of the trust estate referred to as "A" of paragraph three shall be distributed by the said Trustee equally to the following nieces and nephews of the

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said Trustor, Edith Huff: Rex Whitted, Roscoe Whitted, Louie Beaty, Bernice Lutz, Ralph Sentney, and Mrs. Stella Mitchell: [70] or in the event of the death of any of them, his or her share shall go to his or her bodily issue per stirpes, and if no bodily issue to the other Beneficiaries named in this subdivision sixth or to their bodily issue per stirpes.

“Following the death of the said Ella Whitted, sister of the Trustor, Edith Huff, and thereafter at the times hereinbefore set forth for the termination of said portion of this trust, the trust estate then remaining in the hands of the Trustee shall be distributed by the said Trustee two-thirds thereof equally to the following nieces and nephews of the said Trustor, Edith Huff: Rex Whitted, Roscoe Whitted, Louis Beaty, Bernice Lutz, Ralph Sentney, and Mrs. Stella Mitchell; and one-third thereof equally to the following great-nieces and great-nephews of the said Trustor, Edith Huff: Jack Whitted, Margaret Whitted, Milo Mitchell, Gladys Mitchell, Eileen Beaty, Billy Whitted, Jane Whitted, and Donald Whitted. Provided, however, that that part to be distributed to said Donald Whitted shall not be distributed to him unless he has attained the age of twenty-five years. If he has not attained the age of twenty-five years, same shall be held in trust and the income distributed to him monthly until he has attained the age of twenty-five years when the principal held for him shall be distributed to him.

“Should any of the hereinbefore named Beneficiaries, who are to receive income or principal from

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that part of the trust estate referred to as "A" under paragraph three, not be living, or die during the life of this trust and be survived by bodily issue, then said income or principal shall be paid to said bodily issue per stirpes. Should any of said Beneficiaries not be living or die during the life of this trust and not be survived by bodily issue, then the income or principal that would have been distributed to them shall be distributed as provided for the distribution of income in subdivision sixth of this paragraph four."; and

Whereas, in said declaration of trust it is provided that in the event of the death of either of trustors, the surviving trustor reserves the right to amend or alter said declaration of trust in so far as the same shall relate to the distribution of one-half of the trust estate therein provided to be distributed to the family of said surviving trustor, by changing the name of the beneficiaries or changing the amounts provided for any beneficiary; and

Whereas, said W. A. Huff, one of said trustors, died in the county of Orange, state of California, on the nineteenth day of November, 1928, and Edith Huff, said surviving trustor under said declaration of trust, desires now to avail herself of [71] said foregoing provision and amend and alter said declaration of trust in so far as the same relates to the distribution of the one-half of said trust estate therein provided to be distributed to the family of said Edith Huff, and to change certain beneficiaries therein named and the amounts which certain beneficiaries shall receive thereunder, and to alter and

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amend said declaration of trust so as to omit any provision for certain persons or beneficiaries named therein who are by said declaration of trust entitled to receive certain amounts thereunder, as said declaration of trust is now written, so far as said one-half interest of said trust estate is concerned.

Now, Therefore, paragraph four of said declaration of trust No. 245, is hereby stricken out in its entirety and each and every provision thereof shall become and is hereby null and void, and in lieu thereof and substituted therefor, effective from this day and date, shall be the following:

Paragraph four:

"Following the death of said Edith Huff, one of the trustors herein named, from that part of the trust estate referred to as "A" under paragraph three then remaining in the hands of the trustee, the trustee shall pay her funeral expenses and expenses of last illness and legal debts, and thereafter there shall first be paid the following sums to the respective persons mentioned below, namely:

"First: To the Christian Church of Santa Ana, California, the sum of five thousand dollars (\$5000.00).

"Second: To Stella Mitchell, the sum of five thousand dollars (\$5000.00). Should said Stella Mitchell be not surviving or die before the death of said Edith Huff, then said sum of five thousand dollars (\$5000.00) shall become a part of the residue of the trust estate and distributed as hereinafter provided in this paragraph number four. [72]

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"Third: To Roscoe Whitted, the sum of five thousand dollars (\$5000.00). Should said Roscoe Whitted be not surviving or die before the death of said Edith Huff, then said sum of five thousand dollars (\$5000.00) shall become a part of the residue of the trust estate and distributed as hereinafter provided in this paragraph number four.

"Fourth: To Louie Beaty, the sum of five thousand dollars (\$5000.00). Should said Louie Beaty be not surviving or die before the death of said Edith Huff, said sum of five thousand dollars (\$5000.00) shall be paid to Eileen Beaty, daughter of said Louie Beaty. If, however, neither said Louie Beaty nor said Eileen Beaty be surviving at the time of the death of said Edith Huff, then said sum of five thousand dollars (\$5000.00) shall become a part of the residue of the trust estate and distributed as hereinafter provided in this paragraph number four.

"Fifth: To Eileen Beaty, the sum of ten thousand dollars (\$10,000.00). Should said Eileen Beaty be not surviving or die before the death of said Edith Huff, then said sum of ten thousand dollars (\$10,000.00) shall be paid to Louie Beaty, the father of said Eileen Beaty. If, however, neither said Eileen Beaty nor said Louie Beaty be surviving at the death of said Edith Huff, then said sum of ten thousand dollars (\$10,000.00) shall become a part of the residue of the trust estate and distributed as hereinafter provided in this paragraph number four.

"Sixth: To Margaret Whitted, the sum of five thousand dollars (\$5000.00). Should said Margaret Whitted

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be not surviving or die before the death of said Edith Huff, but be survived by bodily issue, then said sum of five thousand dollars (\$5000.00) shall be paid and distributed to said bodily per stirpes. Should said Margaret Whitted, however, not be surviving and not [73] be survived by bodily issue, then said sum of five thousand dollars (\$5000.00) shall become a part of the residue of the trust estate and be distributed as hereinafter provided in this paragraph number four.

"After payment of the funeral expenses, expenses of last illness and legal debts of the trustor, Edith Huff, together with the payments of the sums provided in subdivisions "First" to "Sixth," both inclusive, the balance of said one-half of the entire trust estate then remaining in the hands of the trustee shall be distributed, disposed of and handled in the following manner:

"An equal one-third share of said portion of the trust estate then remaining shall be distributed to Bernice Lutz, niece of said trustor, Edith Huff. Should said Bernice Lutz be not surviving at the death of said Edith Huff, but be survived by bodily issue, then said portion of said estate so to be distributed to said Bernice Lutz shall be distributed to said bodily issue per stirpes. Should said Bernice Lutz not be surviving and not be survived by bodily issue, then said portion of said estate so to be distributed to said Bernice Lutz shall be distributed to Ralph Sentney, brother of said Bernice Lutz, and should said Ralph Sentney be not surviving at said time, then one-fourth of said portion of said estate so to be distributed to Bernice Lutz shall be distributed to William Arthur Lutz, the husband of said Bernice Lutz, and the

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balance of said portion of said estate shall become a part of the trust estate and be held in trust for the benefit of Rex Whitted, Ella Whitted, Margaret Whitted, Jane Whitted, Billy Whitted, Jack Whitted, and Donald Whitted for the time and for the purposes hereinafter provided. Should said William Arthur Lutz be not surviving at said time, then said one-fourth of said estate shall become a part of the trust estate [74] and held in trust as hereinafter provided for the benefit of said Rex Whitted, Ella Whitted, Margaret Whitted, Jane Whitted, Billy Whitted, Jack Whitted, and Donald Whitted.

“An equal one-third share of said portion of the trust estate then remaining shall be distributed to Ralph Sentney, nephew of said Edith Huff. Should Ralph Sentney be not surviving at the date of death of said Edith Huff but be survived by bodily issue, then that portion of said estate so to be distributed to said Ralph Sentney shall be distributed to the bodily issue of said Ralph Sentney per stirpes. If, however, said Ralph Sentney be not surviving and not be survived by bodily issue, then said portion of said estate shall be distributed to Bernice Lutz, the sister of said Ralph Sentney, and should said Bernice Lutz be not surviving at said time, and should said Ralph Sentney be not survived by bodily issue, then one-half of said portion of said estate so to be distributed to said Ralph Sentney shall be distributed to the wife of said Ralph Sentney, if he is married, and said wife is living with him and no proceedings for divorce or separate maintenance be pending between them at the time of the death of said Ralph Sentney, and the other one-half of said estate shall become a part of the residue of the trust

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estate to be held in trust for the benefit of Rex Whitted, Ella Whitted, Margaret Whitted, Jane Whitted, Jack Whitted, Billy Whitted, and Donald Whitted, for the period of time and for the purposes hereinafter provided. Should said Ralph Sentney be not survived by a wife, or should said wife not be living with him or proceedings for divorce or separate maintenance be pending at the time of his death, then said one-half of said estate to which said wife [75] would otherwise be entitled shall be distributed to Eileen Beaty, or if Eileen Beaty be not surviving, then to Louie Beaty, father of Eileen Beaty, and should said Louie Beaty be then not surviving, then said portion of said estate shall become a part of the residue of the trust estate and held in trust for the benefit of said Rex Whitted, Ella Whitted, Margaret Whitted, Jane Whitted, Jack Whitted, Billy Whitted, and Donald Whitted for the period of time and for the purposes hereinafter provided.

“An equal one-third share of said portion of the trust estate to remain in trust during the life of Ella Whitted and thereafter so long as Rex Whitted shall live and until Donald Whitted attains the age of eighteen (18) years, or if said Donald Whitted should die before attaining such age, then until such a time until said Donald Whitted would have attained the age of eighteen (18) years had he lived, and the income from this portion of said estate so held in trust, provided said income will permit, shall be divided as follows:

“(a) One hundred dollars (\$100.00) per month of said income shall be paid to Rex Whitted for his personal use during his life. Should the said Rex Whitted be not

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surviving or die before the death of said Edith Huff, then Katherine Whitted, the wife of said Rex Whitted, shall be paid said sum of one hundred dollars (\$100.00) per month during her life. Should the said Katherine Whitted be not surviving or die before the death of said Edith Huff, then the said one hundred dollars (\$100.00) per month shall be divided and paid to the bodily issue of said Rex Whitted living at the date of execution of this declaration of trust, per stirpes, provided they have attained the age of [76] twenty-one (21) years. Any of said bodily issue of said Rex Whitted who have not, at the time of death of said Katherine Whitted, attained the age of twenty-one (21) years, then that part of the income which would have been distributed to them or any of them, should they or any of them have attained the age of twenty-one (21) years, shall be deposited in a savings account for the benefit of said bodily issue, respectively, who have not so attained the age of twenty-one (21) years, and the income so accumulated thereon shall be distributed to said bodily issue at such time as said bodily issue attain the age of twenty-one (21) years, respectively. Should any of said bodily issue of said Rex Whitted die during the time said bodily issue shall be entitled to receive his or their share of said one hundred dollars (\$100.00) per month, then the interest to which said bodily issue so deceased would be entitled shall be paid to and be divided equally among the survivor or survivors of said bodily issue of said Rex Whitted, who may be living upon the execution of this declaration of trust. Upon the death of said Rex Whitted and the said Katherine Whitted, his said wife, and upon the death of all of the bodily issue of said Rex Whitted living at the

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date of the execution of this declaration of trust, then this trust, in so far as it relates to one-third share of said one-half portion of said estate so held in trust, shall ipso facto terminate and the said estate with accumulated income thereon shall be distributed to the persons who may be the then surviving heirs at law of said trustor, Edith Huff, according to the laws of succession of the state of California then in effect, such persons to be ascertained as of the date of the termination of this trust effecting said one-third portion of said one-half of the trust estate so held in trust.

“(b) The sum of one hundred fifty dollars (\$150.00) of said income shall be paid to Ella Whitted so long as said [77] Ella Whitted shall live, said sum to be paid monthly. Should said Ella Whitted be not surviving or die before the death of said Edith Huff or at any time after the death of said Edith Huff, at which time she would be entitled to receive said sum of one hundred fifty dollars (\$150.00) per month, the said sum shall be divided and paid one-third to Rex Whitted, the son of said Ella Whitted, and two-thirds thereof divided among and paid to Margaret Whitted, Jane Whitted, Billy Whitted, Jack Whitted and Donald Whitted, grandchildren of said Ella Whitted and the bodily issue of Rex Whitted; provided, however, if, at such time, any of said bodily issue shall not have attained the age of twenty-one (21) years, the said income payable to those of them who have not so attained such age shall be deposited in a savings account to be paid to said bodily issue as and when they reach the age of twenty-one (21) years, respectively. Upon the death of any of said bodily issue of said Rex

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Whitted at any time they are entitled to receive said share of said sum of one hundred fifty dollars (\$150.00) per month by reason of the death of said Ella Whitted, the interest or amount to which such bodily issue so deceased would be entitled to take, had such bodily issue lived, shall be divided equally among and paid to the survivor or survivors of said bodily issue, and the interest or amount any of said bodily issue who has not attained the age of twenty-one (21) years shall be deposited in said savings account to be distributed at the time said bodily issue shall attain said age of twenty-one (21) years, respectively.

“(c) The balance of the income of said estate then remaining in the hands of said trustee after the payment of said sums of one hundred dollars (\$100.00) and one hundred fifty dollars (\$150.00) monthly, as just above provided, shall be paid to and divided equally among the bodily issue of Rex Whitted, [78] namely: Margaret Whitted, Jane Whitted, Billy Whitted, Jack Whitted and Donald Whitted. Should any of said bodily issue be not surviving or die before the death of said Edith Huff, but be survived by bodily issue then the amount provided to be paid to or accumulated for such bodily issue of said Rex Whitted shall be disbursed to the bodily issue of such deceased bodily issue of said Rex Whitted per stirpes. If, however, any one or more of said bodily issue of said Rex Whitted be not surviving or die before the death of said Edith Huff and not be survived by bodily issue of said deceased bodily issue of said Rex Whitted, then the interest or amount to be paid to any of the bodily issue of said Rex Whitted so deceased, shall be divided equally among and be paid to the survivor or

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survivors of said bodily issue of said Rex Whitted, and upon the death of all of said bodily issue of said Rex Whitted this trust, in so far as it relates to said one-third share of said one-half part thereof, shall terminate forthwith and the trust estate then remaining in the hands of said trustee shall be distributed and such distribution shall be made in the following manner: the bodily issue of any of the deceased bodily issue of said Rex Whitted shall receive the estate and interest which said deceased bodily issue of said Rex Whitted would be entitled to receive had he or she lived, per stirpes; and the balance then remaining shall be distributed to the persons who may be the then surviving heirs at law of said Edith Huff according to the law of succession of the state of California then in effect, such persons to be ascertained at the date of the termination of this portion of said trust.

“Should any of said bodily issue of said Rex Whitted not attain the age of twenty-one (21) years at the date of the death of said Edith Huff or at the time any of them are entitled to receive said sums above provided to be so divided among [79] them, then the same shall be deposited in a savings account to be disbursed to said bodily issue when they attain the age of twenty-one (21) years, respectively, except that as hereinafter provided certain sums may be used for maintenance and education until said bodily issue attain said age of twenty-one (21) years.

“From the said above income to be paid into said savings account, as above provided, for said Donald Whitted, during the time and until said Donald Whitted shall

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attain the age of twenty-one (21) years, there shall be set aside the sum of fifty dollars (\$50.00) per month, which said sum shall be distributed and accumulated by said trustee in the following manner: ten dollars (\$10.00) per month thereof shall be used by said trustee toward the support and education of said Donald Whitted until he attains the age of eight (8) years; fifteen dollars (\$15.00) per month of said sum shall be used by said trustee toward the support and education of said Donald Whitted from the time he attains the age of eight (8) years until he attains the age of twelve (12) years; twenty-five dollars (\$25.00) per month of said sum shall be used by said trustee toward the maintenance and education of said Donald Whitted from the time he attains the age of twelve (12) years until he attains the age of sixteen (16) years; fifty dollars (\$50.00) per month shall be used by the said trustee toward the maintenance and education of said Donald Whitted from the time he attains the age of sixteen (16) years until he attains the age of twenty-one (21) years, provided he attends a high school, college or university. If he does not attend a high school, college or university, said sum of fifty dollars (\$50.00) per month shall be held, and the interest accumulated thereon, in said savings account to be distributed and paid to said Donald Whitted when he attains the age of twenty-one (21) years. The balance of said fifty dollars [80] (\$50.00), as hereinbefore provided, shall be held and maintained in said savings account and the income accumulated thereon until said Donald Whitted attains the age of sixteen (16) years when said sums so accumulated in said savings account, including the earnings thereon, shall be used toward the maintenance and

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education of said Donald Whitted, provided he attends a high school, college or university. If he does not attend a high school, college or university, said sums are to be accumulated and paid to him when he attains the age of twenty-one (21) years.

"From said income provided above to be deposited in said savings account to the credit and for the benefit of Jane Whitted, greatniece of said trustor, Edith Huff, there shall be set aside the sum of fifty dollars (\$50.00) per month, to be distributed and accumulated by the said trustee in the following manner: twenty-five dollars (\$25.00) per month thereof to be used by the said trustee toward the maintenance and education of Jane Whitted until said Jane Whitted has attained the age of sixteen (16) years; fifty dollars (\$50.00) per month shall be used by the trustee toward the maintenance and education of said Jane Whitted from the time she attains the age of sixteen (16) years until she attains the age of twenty-one (21) years, provided she attends a high school, college or university. If she does not attend a high school, college or university, said sum of fifty dollars (\$50.00) per month shall be held and maintained in said savings account to be paid to said Jane Whitted, with the interest accumulated thereon, when she has attained the age of twenty-one (21) years. The balance of said sum of fifty dollars (\$50.00), as hereinbefore provided, shall be held in said savings account and the income accumulated thereon until said Jane Whitted attains the age of sixteen (16) years when the sums so accumulated in said savings account, including the earnings thereon, shall be used toward the maintenance and education of said Jane Whitted, provided she [81] attends a high school, college or uni-

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versity. If she does not attend a high school, college or university, said sums are to be accumulated and paid to her, with the income accumulated thereon, when she attains said age of twenty-one (21) years.

"From the said above income hereinbefore provided to be held in said savings account to the credit and for the benefit of Billy Whitted, greatnephew of said trustor, Edith Huff, until said Billy Whitted attains the age of twenty-one (21) years, there shall be set aside the sum of fifty dollars (\$50.00) per month, to be distributed to and accumulated for said Billy Whitted in the following manner: twenty-five dollars (\$25.00) per month thereof to be used by said trustee toward the maintenance and education of said Billy Whitted until he has attained the age of sixteen (16) years; fifty dollars (\$50.00) per month of said sum to be used by the trustee toward the maintenance and education of said Billy Whitted from the time he attains the age of sixteen (16) years until he attains the age of twenty-one (21) years, provided he attends a high school, college or university. If he does not attend a high school, college or university, said sum of fifty dollars (\$50.00) per month shall be held and maintained in said savings account, to be paid to said Billy Whitted, together with the income accumulated thereon when he has attained the age of twenty-one (21) years. The balance of said fifty dollars (\$50.00) per month, as hereinbefore provided, shall be accumulated in said savings account, together with the income earned thereon, for the

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benefit of said Billy Whitted until he attains the age of sixteen (16) years when the sums so accumulated in said savings account, including the earnings thereon, shall be used toward the maintenance and education of said Billy Whitted, provided he attends a high school, college or university. If he does not attend a high school, college or university, said sums shall be held in said savings account, to be paid to said [82] Billy Whitted, together with income accumulated thereon, when he attains the age of twenty-one (21) years."

In Witness Whereof, The First National Bank of Santa Ana, in its capacity as trustee, has caused this instrument to be executed by its proper officer thereunto duly authorized, under its corporate seal, this day of January, 1929.

THE FIRST NATIONAL BANK OF SANTA ANA

By, trust officer.
Trustee.

Edith Huff, the undersigned, named in said declaration of trust No. 245 as one of the trustors thereunder, does hereby approve, ratify and confirm this amendment to said declaration of trust No. 245, and does hereby agree to be bound by all of the terms thereof.

Dated this day of January, 1929.

(Edith Huff)

Trustor. [83]

(Trustee's Exhibit No. 1.)

AMENDMENT TO DECLARATION OF TRUST
NO. 245. (W. A. Huff)

Know All Men By These Presents:

That Whereas, there was duly executed under date of May 10th, 1927, a certain Declaration of Trust whereby The First National Bank of Santa Ana, Santa Ana, California, a national banking corporation, was named Trustee and W. A. Huff and Edith Huff were named Trustors; and

Whereas, in said Declaration of Trust it is provided that in the event of the death of either of the Trustors the surviving Trustor reserves the right to amend or alter said Declaration of Trust insofar as the same shall relate to the distribution of one-half of the trust estate therein provided to be distributed to the family of the surviving Trustor by changing the name of the Beneficiaries or changing the amounts provided for any Beneficiary, and

Whereas, said W. A. Huff, one of the Trustors, died in the County of Orange, State of California, on the 19th day of November, 1928, and Edith Huff, said surviving Trustor under said Declaration of Trust, availed herself of the said foregoing provision and amended said trust as to the division of said one-half on the 7th day of January, 1929, by executing two instruments in making amendment thereof, both acknowledged on the 7th day of January, 1929;

Now, therefore, paragraph four of said Declaration of Trust No. 245 as amended on January 7th, 1929, is hereby stricken out in its entirety and each and every pro-

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vision shall become and is hereby null and void, and in lieu thereof and substituted therefor, effective from this day and date, shall be the following:

Paragraph four:

"Following the death of said Edith Huff, one of the trustors herein name, from that part of the trust estate referred to as [84] "A" under paragraph three then remaining in the hands of the trustee, the trustee shall pay her funeral expenses and expenses of last illness and legal debts, and thereafter there shall first be paid the following sums to the respective persons mentioned below, namely:

"First: To the Christian Church of Santa Ana, California, the sum of twenty-five hundred dollars (\$2500.00).

"Second: To Stella Mitchell, niece of said Trustor, the sum of twenty-five hundred dollars (\$2500.00). Should said Stella Mitchell be not surviving or die before the death of said Edith Huff, then said sum of twenty-five hundred dollars (\$2500.00) shall become a part of the residue of the trust estate and distributed as hereinafter provided in this paragraph number four.

"Third: To Milo Mitchell, grand-nephew of said Trustor, the sum of twenty-five hundred dollars (\$2500.00). Should said Milo Mitchell be not surviving or die before the death of said Edith Huff, then said sum of twenty-five hundred dollars (\$2500.00) shall become a part of the residue of the trust estate and distributed as hereinafter provided in this paragraph number four.

"Fourth: To Gladys Mitchell, grand-niece of said Trustor, the sum of Twenty-five hundred dollars

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(\$2500.00). Should said Gladys Mitchell be not surviving or die before the death of said Edith Huff, then said sum of twenty-five hundred dollars (\$2500.00) shall become a part of the residue of the trust estate and distributed as hereinafter provided in this paragraph number four.

"Fifth: To Louie Beaty, nephew of said Trustor, the sum of twenty-five hundred dollars (\$2500.00). Should said Louie Beaty be not surviving or die before the death of said Edith Huff, then said sum of twenty-five hundred dollars (\$2500.00) shall become a part of the residue of the trust estate and distributed as hereinafter provided in this paragraph number four.

"Sixth: To Eileen Beaty, great-niece of said Trustor, the sum [85] of five hundred dollars (\$500.00). Should said Eileen Beaty be not surviving or die before the death of Edith Huff, then said sum of five hundred dollars (\$500.00) shall be paid to Louie Beaty, the father of said Eileen Beaty. If, however, neither said Eileen Beaty nor said Louie Beaty be surviving at the death of said Edith Huff, then said sum of five hundred dollars (\$500.00) shall become a part of the residue of the trust estate and distributed as hereinafter provided in this paragraph number four.

"Seventh: To Margaret Joanna Donahue, great-great-niece of the said Trustor, Edith Huff, and a daughter of Margaret Whitted Donahue, deceased, the sum of Fifteen thousand dollars (\$15,000.00), provided the said Margaret Joanna Donahue has attained the age of twenty-seven years. If, however, said Margaret Joanna Donahue has not attained the age of twenty-seven years at the

(Trustee's Exhibit No. 1.)

time of the death of the said Trustor, Edith Huff, but has attained the age of twenty-one years, then one-half of the said Fifteen thousand dollars (\$15,000.00) shall be distributed to the said Margaret Joanna Donahue, and one-half shall remain in trust with the said Trustee and the income available therefrom shall be distributed to said Margaret Joanna Donahue until she has attained the age of twenty-seven years, when the said trust estate created for her benefit as provided herein then remaining in the hands of the Trustee, together with any accumulation of income therefrom, shall be distributed to the said Margaret Joanna Donahue, and should the said Margaret Joanna Donahue not have attained the age of twenty-one years at the time of the death of said Trustor, Edith Huff, then the said fifteen thousand dollars (\$15,000.00) shall be held in trust by said Trustee and the income available for distribution shall be distributed to Bernice Lutz, niece of the Trustor, for the support and education of said Margaret Joanna Donahue, the said Bernice Lutz, insofar as this trust fund is [86] concerned, to be known as the guardian of Margaret Joanna Donahue, and the amount needed for the support and education of the said Margaret Joanna Donahue is to be determined solely by said Bernice Lutz. Any income in excess of the actual amount designated by the said Bernice Lutz for the support and education of said Margaret Joanna Donahue is to become a part of the principal of the said trust fund created hereunder for her benefit. Should the said Margaret Joanna Donahue not survive the said Trustor, Edith Huff, then the said sum of fifteen thousand dollars (\$15,000.00) shall be cancelled as to Margaret Joanna Donahue and is to become a part of the residue of the trust estate and

(Trustee's Exhibit No. 1.)

distributed as hereinafter provided in this paragraph number four. Should said Margaret Joanna Donahue survive the Trustor, Edith Huff, but die before the termination of this trust fund created for her benefit, 50% of the amount remaining in trust for her benefit at the time of her death shall be distributed to her Father, John J. Donahue, and the balance is to become a part of the residue of the trust estate and distributed as hereinafter provided in this paragraph number four. Should the said John J. Donahue not be surviving at the death of said Margaret Joanna Donahue, then the 50% of the amount remaining in the trust for the benefit of Margaret Joanna Donahue shall become a part of the residue of the trust estate and distributed as hereinafter provided in this paragraph four.

“After payment of the funeral expenses, expenses of last illness and legal debts of the trustor, Edith Huff, together with the payments of the sums provided in subdivisions “First” to “Seventh,” both inclusive, the balance
trust

of said one-half of the entire / estate then remaining in the hands of the trustee shall be distributed, disposed of and handled in the following manner:

“An equal one-third share of said portion of the trust estate then remaining shall be distributed to Bernice Lutz, niece of said trustor, Edith Huff. Should said Bernice Lutz be not surviving [87] at the death of said Edith Huff, but be survived by bodily issue, then said portion of said estate so to be distributed to said Bernice Lutz shall be distributed to said bodily issue per stirpes. Should said Bernice Lutz not be surviving and not be survived

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by bodily issue, then said portion of said estate so to be distributed to said Bernice Lutz shall be distributed to Ralph Sentney, brother of said Bernice Lutz, and should said Ralph Sentney be not surviving at said time, then one-fourth of said portion of said estate so to be distributed to Bernice Lutz shall be distributed to William Arthur Lutz, the husband of said Bernice Lutz, and the balance of said portion of said estate shall become a part of the trust estate and be held in trust for the benefit of Rex Whitted, nephew, Ella Whitted, sister, Jane Whitted, Billy Whitted, Jack Whitted, and Donald Whitted, great-nieces and nephews of said Trustor, for the time and for the purposes hereinafter provided. Should said William Arthur Lutz be not surviving at said time, then said one-fourth of said estate shall become a part of the trust estate and held in trust as hereinafter provided for the benefit of said Rex Whitted, Ella Whitted, Jane Whitted, Billy Whitted, Jack Whitted, and Donald Whitted.

"An equal one-third share of said portion of the trust estate then remaining shall be distributed to Ralph Sentney, nephews of said Edith Huff. Should Ralph Sentney be not surviving at the date of death of said Edith Huff but be survived by bodily issue, then that portion of said estate so to be distributed to said Ralph Sentney shall be distributed to the bodily issue of said Ralph Sentney per stirpes. If, however, said Ralph Sentney be not surviving and not be survived by bodily issue, then said portion of said estate shall be distributed to Bernice Lutz, the sister of said Ralph Sentney, and should said Bernice Lutz be not surviving at said time, and should said Ralph Sentney be not survived by bodily issue, then one-half of

(Trustee's Exhibit No. 1.)

said portion of said estate so to be [88] distributed to said Ralph Sentney shall be distributed to the wife of said Ralph Sentney, if he is married, and said wife is living with him and no proceedings for divorce or separate maintenance be pending between them at the time of the death of said Ralph Sentney, and the other one-half of said estate shall become a part of the residue of the trust estate to be held in trust for the benefit of Rex Whitted, nephew, Ella Whitted, sister, Jane Whitted, Jack Whitted, Billy Whitted, and Donald Whitted, great-niece and nephews of said Trustor, for the period of time and for the purposes hereinafter provided. Should said Ralph Sentney be not survived by a wife, or should said wife not be living with him or proceedings for divorce or separate maintenance be pending at the time of his death, then said one-half of said estate to which said wife would otherwise be entitled shall be distributed to Margaret Joanna Donahue, if the said Margaret Joanna Donahue has attained the age of twenty-seven years at the death of said Trustor, Edith Huff. If the said Margaret Joanna Donahue has not attained the age of twenty-seven years, then said one-half of said estate to which said wife would otherwise be entitled shall become a part of the trust estate created for Margaret Joanna Donahue under Subdivision Seven of this paragraph four, and should the said Margaret Joanna Donahue not be surviving then said portion of said trust estate shall become a part of the residue of the trust estate and held in trust for the benefit of said Rex Whitted, Ella Whitted, Jane Whitted, Jack Whitted, Billy Whitted, and Donald Whitted for the period of time and for the purposes hereinafter provided.

(Trustee's Exhibit No. 1.)

“An equal one-third share of said portion of the trust estate to remain in trust during the life of Ella Whitted, sister of said Trustor, and thereafter so long as Rex Whitted, nephew of said Trustor, shall live and until Donald Whitted, great-nephew of said Trustor, attains the age of eighteen (18) years, or if said Donald Whitted should die before attaining such age, then until such a time until said Donald Whitted would have attained the age of eighteen (18) years had he lived, and the income from this portion of said estate so held in trust, provided said income [89] will permit, shall be divided as follows:

“(a) One hundred dollars (\$100.00) per month of said income shall be paid to Rex Whitted, nephew of said Trustor, for his personal use during his life. Should the said Rex Whitted be not surviving or die before the death of said Edith Huff, then Katherine Whitted, the wife of said Rex Whitted, shall be paid said sum of one hundred dollars (\$100.00) per month during her life. Should the said Katherine Whitted be not surviving or die before the death of said Edith Huff, then the said one hundred dollars (\$100.00) per month shall be divided and paid to the bodily issue of said Rex Whitted living at the date of execution of this declaration of trust, per stirpes, provided they have attained the age of twenty-one years. Any of said bodily issue of said Rex Whitted who have not, at the time of death of said Katherine Whitted, attained the age of twenty-one (21) years, then that part of the income which would have been distributed to them or any of them, should they or any of them have attained the age of twenty-one (21) years,

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shall be deposited in a savings account for the benefit of said bodily issue, respectively, who have not so attained the age of twenty-one (21) years, and the income so accumulated thereon shall be distributed to said bodily issue at such time as said bodily issue attain the age of twenty-one (21) years, respectively. Should any of said bodily issue of said Rex Whitted die during the time said bodily issue shall be entitled to receive his or their share of said one hundred dollars (\$100.00) per month, then the interest to which said bodily issue so deceased would be entitled shall be paid to and be divided equally among the survivor or survivors of said bodily issue of said Rex Whitted, who may be living upon the execution of this declaration of trust. Upon the death of said Rex Whitted and the said Katherine Whitted, his said wife, and upon the death of all of the bodily issue of said Rex Whitted [90] living at the date of the execution of this declaration of trust, then this trust, in so far as it relates to one-third share of said one-half portion of said estate so held in trust, shall ipso facto terminate and the said estate with accumulated income thereon shall be distributed to the persons who may be the then surviving heirs at law of said trustor, Edith Huff, according to the laws of succession of the State of California then in effect, such persons to be ascertained as of the date of the termination of this trust effecting said one-third portion of said one-half of the trust estate so held in trust.

“(b) The sum of one hundred fifty dollars (\$150.00) of said income shall be paid to Ella Whitted so long as said Ella Whitted shall live, said sum to be paid monthly. Should said Ella Whitted be not surviving or die before the death of said Edith Huff or at any time after the

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death of said Edith Huff, at which time she would be entitled to receive said sum of one hundred fifty dollars (\$150.00) per month, the said sum shall be divided and paid one-third to Rex Whitted, the son of said Ella Whitted, and two-thirds thereof divided among and paid to Jane Whitted, Billy Whitted, Jack Whitted and Donald Whitted, grandchildren of said Ella Whitted and the bodily issue of Rex Whitted; provided, however, if, at such time, any of said bodily issue shall not have attained the age of twenty-one (21) years, the said income payable to those of them who have not so attained such age shall be deposited in a savings account to be paid to said bodily issue as and when they reach the age of twenty-one (21) years, respectively. Upon the death of any of said bodily issue of said Rex Whitted at any time they are entitled to receive said share of said sum of one hundred fifty dollars (\$150.00) per month by reason of the death of said Ella Whitted, the interest or amount to which such bodily issue so deceased would be entitled to take, had such bodily issue lived, shall be divided equally among and [91] paid to the survivor or survivors of said bodily issue, and the interest or amount any of said bodily issue who has not attained the age of twenty-one (21) years shall be deposited in said savings account to be distributed at the time said bodily issue shall attain said age of twenty-one (21) years, respectively.

“(c) The balance of the income of said estate then remaining in the hands of said trustee after the payment of said sums of one hundred dollars (\$100.00) and one hundred fifty dollars (\$150.00) monthly, as just above provided, shall be paid to and divided equally among the bodily issue of Rex Whitted, namely: Jane Whitted, Billy

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Whitted, Jack Whitted and Donald Whitted. Should any of said bodily issue be not surviving or die before the death of said Edith Huff, but be survived by bodily issue then the amount provided to be paid to or accumulated
issue

for such bodily / of said Rex Whitted shall be disbursed to the bodily issue of such deceased bodily issue of said Rex Whitted per stirpes. If, however, any one or more of said bodily issue of said Rex Whitted be not surviving or die before the death of said Edith Huff and not be survived by bodily issue of said deceased bodily issue of said Rex Whitted, then the interest or amount to be paid to any of the bodily issue of said Rex Whitted so deceased, shall be divided equally among and be paid to the survivor or survivors of said bodily issue of said Rex Whitted, and upon the death of all of said bodily issue of said Rex Whitted this trust, in so far as it relates to said one-third share of said one-half part thereof, shall terminate forthwith and the trust estate then remaining in the hands of said trustee shall be distributed and such distribution shall be made in the following manner: the bodily issue of any of the deceased bodily issue of said Rex Whitted shall receive the estate and interest which said deceased bodily issue of said Rex Whitted would be entitled to receive had he or she lived, per stirpes; and the balance then [92] remaining shall be distributed to the persons who may be the then surviving heirs at law of said Edith Huff according to the law of succession of the State of California then in effect, such person to be ascertained at the date of the termination of this portion of said trust.

(Trustee's Exhibit No. 1.)

"Should any of said bodily issue of said Rex Whitted not attain the age of twenty-one (21) years at the date of the death of said Edith Huff or at the time any of them are entitled to receive said sums above provided to be so divided among them, then the same shall be deposited in a savings account to be disbursed to said bodily issue when they attain the age of twenty-one (21) years, respectively, except that as hereinafter provided certain sums may be used for maintenance and education until said bodily issue attain said age of twenty-one (21) years.

"From the said above income to be paid into said savings account, as above provided, for said Donald Whitted, during the time and until said Donald Whitted shall attain the age of twenty-one (21) years, there shall be set aside the sum of fifty dollars (\$50.00) per month, which said sum shall be distributed and accumulated by said trustee in the following manner; ten dollars (\$10.00) per month thereof shall be used by said trustee toward the support and education of said Donald Whitted until he attains the age of eight (8) years; fifteen dollars (\$15.00) per month of said sum shall be used by said trustee toward the support and education of said Donald Whitted from the time he attains the age of eight (8) years until he attains the age of twelve (12) years; twenty-five dollars (\$25.00) per month of said sum shall be used by said trustee toward the maintenance and education of said Donald Whitted from the time he attains the age of twelve (12) years until he attains the age of sixteen (16) years; fifty dollars (\$50.00) per month shall be used by the said trustee toward the maintenance and education of said Donald [93] Whitted from the time he attains the

(Trustee's Exhibit No. 1.)

age of sixteen (16) years until he attains the age of Twenty-one (21) years, provided he attends a high school, college or university. If he does not attend a high school, college or university, said sum of fifty dollars (\$50.00) per month shall be held, and the interest accumulated thereon, in said savings account to be distributed and paid to said Donald Whitted when he attains the age of twenty-one (21) years. The balance of said fifty dollars (\$50.00), as hereinbefore provided, shall be held and maintained in said savings account and the income accumulated thereon until said Donald Whitted attains the age of sixteen (16) years when said sums so accumulated in said savings account, including the earnings thereon, shall be used toward the maintenance and education of said Donald Whitted, provided he attends a high school, college or university. If he does not attend a high school, college or university, said sums are to be accumulated and paid to him when he attains the age of twenty-one (21) years.

“From said income provided above to be deposited in said savings account to the credit and for the benefit of Jane Whitted, greatniece of said trustor, Edith Huff, there shall be set aside the sum of fifty dollars (\$50.00) per month, to be distributed and accumulated by the said trustee in the following manner: Twenty-five dollars (\$25.00) per month thereof to be used by the said trustee toward the maintenance and education of Jane Whitted until said Jane Whitted has attained the age of sixteen (16) years; fifty dollars (\$50.00) per month shall be used by the

(Trustee's Exhibit No. 1.)

trustee toward the maintenance and education of said Jane Whitted from the time she attains the age of sixteen (16) years until she attains the age of twenty-one (21) years, provided she attends a high school, college or university. If she does not attend a high school, college or university, said sum of fifty dollars (\$50.00) per month shall be held and maintained in said savings account [94] to be paid to said Jane Whitted, with the interest accumulated thereon, when she has attained the age of twenty-one (21) years. The balance of said sum of fifty dollars (\$50.00), as hereinbefore provided, shall be held in said savings account and the income accumulated thereon until said Jane Whitted attains the age of sixteen (16) years when the sums so accumulated in said savings account, including the earnings thereon, shall be used toward the maintenance and education of said Jane Whitted, provided she attends a high school, college or university. If she does not attend a high school, college or university, said sums are to be accumulated and paid to her, with the income accumulated thereon, when she attains said age of twenty-one (21) years.

“From the said above income hereinbefore provided to be held in said savings account to the credit and for the benefit of Billy Whitted, great-nephew of said Trustor, Edith Huff, until said Billy Whitted attains the age of twenty-one (21) years, there shall be set aside the sum of fifty dollars (\$50.00) per month, to be distributed to and accumulated for said Billy Whitted in the following

(Trustee's Exhibit No. 1.)

manner: Twenty-five dollars (\$25.00) per month thereof to be used by said trustee toward the maintenance and education of said Billy Whitted until he has attained the age of sixteen (16) years; fifty dollars (\$50.00) per month of said sum to be used by the trustee toward the maintenance and education of said Billy Whitted from the time he attains the age of sixteen (16) years until he attains the age of twenty-one (21) years, provided he attends a high school, college or university. If he does not attend a high school, college or university, said sum of fifty dollars (\$50.00) per month shall be held and maintained in said savings account, to be paid to said Billy Whitted, together with the income accumulated thereon when he has attained the age of twenty-one (21) years. The balance of said fifty dollars (\$50.00) per month, as hereinbefore provided, shall be accumulated [95] in said savings account, together with the income earned thereon, for the benefit of said Billy Whitted until he attains the age of sixteen (16) years when the sums so accumulated in said savings account, including the earnings thereon, shall be used toward the maintenance and education of said Billy Whitted, provided he attends a high school, college or university. If he does not attend a high school, college or university, said sums shall be held in said savings account, to be paid to said Billy Whitted, together with income accumulated thereon, when he attains the age of twenty-one (21) years."

(Trustee's Exhibit No. 1.)

It is a condition as to the distribution of the part of the trust estate distributed under this paragraph four, controlling all other provisions thereof and anything to the contrary therein notwithstanding, that the trusts as provided under this said paragraph four shall terminate and end immediately upon the death of said Edith Huff and all the specifically named Beneficiaries under said paragraph four who shall be alive at the date of the execution of said trust, and at said time the Trustee shall distribute all the principal or corpus of that part of the trust estate as provided for distribution under this paragraph four in its hands to the persons entitled thereto as provided therein.

In Witness Whereof, The First National Bank of Santa Ana, in its capacity as Trustee, has caused this instrument to be executed by its proper officer thereunto duly authorized, under its corporate seal, this 28 day of Aug., 1934.

THE FIRST NATIONAL BANK OF SANTA ANA

By..... Trust Officer.

Trustee. [96]

I, the undersigned, surviving Trustor, named in said Declaration of Trust No. 245, do hereby approve, ratify and confirm this Amendment to said Declaration of Trust No. 245, and I do hereby agree to be bound by all the terms thereof.

Dated this day of , 1934.

.....
Trustor. [97]

County of Orange—ss.

Witness My hand and official seal.

County of Orange—ss.

Witness my hand and official seal.

Notary Public in and for said County and
State. [98]

(Trustee's Exhibit No. 1.)

AMENDMENT TO DECLARATION OF TRUST
NO. 245. (W. A. Huff)

Know All Men By These Presents:

That Whereas, there was duly executed under date of May 10th, 1927, a certain Declaration of Trust whereby the First National Bank of Santa Ana, Santa Ana, California, a national banking corporation, was named Trustee, and W. A. Huff and Edith Huff were named Trustors; and

Whereas, in said Declaration of Trust it is provided that in the event of the death of either of the Trustors the surviving Trustor reserves the right to amend or alter said Declaration of Trust insofar as the same shall relate to the distribution of one-half of the trust estate therein provided to be distributed to the family of the surviving Trustor by changing the name of the Beneficiaries or changing the amounts provided for any Beneficiary, and

Whereas, said W. A. Huff, one of the Trustors, died on the 19th day of November, 1928, and Edith Huff, said surviving Trustor under said Declaration of Trust, availed herself of the said foregoing provision and amended said trust as to the division of said one-half on the 29th day of August, 1934, by executing instrument in making amendment thereof, acknowledged on the 29th day of August, 1934.

Now, Therefore, paragraph four of said Declaration of Trust Number 245 as amended on August 29, 1934, is hereby stricken out in its entirety and each and every provision shall become and is hereby null and void, and in lieu thereof and substituted therefor, effective from this day and date, shall be the following:

(Trustee's Exhibit No. 1.)

Paragraph four:

"Following the death of said Edith Huff, one of the Trustors herein named, from that part of the trust estate referred to as "A" under paragraph three then remaining in the hands of the [99] trustee, the trustee shall pay her funeral expenses and expenses of last illness and legal debts, and thereafter the remainder shall be distributed by the Trustee to Bernice Lutz, niece of the said Trustor, Edith Huff. Should the said Bernice Lutz not be surviving at the time of the death of the said Edith Huff then said portion of the trust estate so to be distributed to the said Bernice Lutz shall be distributed in accordance with the terms of the last will and testament of the said Trustor, Edith Huff.

In Witness Whereof, The First National Bank of Santa Ana, in its capacity as Trustee, has caused this instrument to be executed by its proper officer thereunto duly authorized, under its corporate seal, this 29 day of May, 1935.

THE FIRST NATIONAL BANK OF SANTA ANA,
By C. L. PRITCHARD,
Trust Officer—Trustee.

I, the undersigned, surviving Trustor, named in said Declaration of Trust number 245, do hereby approve, ratify and confirm this amendment to said declaration of trust number 245, and I do hereby agree to be bound by all the terms thereof.

Dated this 28 day of May, 1935.

Edith Huff
Trustor. [100]

(Trustee's Exhibit No. 1.)

State of California

County of Orange—ss.

On this 29 day of May, 1935, before me, the undersigned, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared C. L. Pritchard, known to me to be the Trust Officer of the corporation described in and that executed the within instrument, and known to me to be the person who executed the within instrument, on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

Witness my hand and official seal.

D. C. HAMILTON,

Notary Public in and for said County and
State.

State of California

County of Orange—ss.

On this 28 day of May, 1935, before me, the undersigned, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Edith Huff, known to me to be the person described in and whose name is subscribed to the within instrument, and she acknowledged to me that she executed the same.

Witness my hand and official seal.

HELEN BURSON,

Notary Public in and for said County and
State. [101]

(Trustee's Exhibit No. 1.)

AMENDMENT TO DECLARATION OF TRUST
NO. 245. (W. A. Huff)

Know All Men By These Presents:

That Whereas, there was duly executed under date of May 10th, 1927, a certain Declaration of Trust whereby The First National Bank of Santa Ana, Santa Ana, California, a national banking corporation, was named Trustee and W. A. Huff and Edith Huff were named Trustors; and

Whereas, in said Declaration of Trust it is provided that in the event of the death of either of the Trustors the surviving Trustor reserves the right to amend or alter said Declaration of Trust insofar as the same shall relate to the distribution of one-half of the trust estate therein provided to be distributed to the family of the surviving Trustor by changing the name of the Beneficiaries or changing the amounts provided for any Beneficiary, and

Whereas, said W. A. Huff, one of the Trustors, died in the County of Orange, State of California, on the 19th day of November, 1928, and Edith Huff, said surviving Trustor under said Declaration of Trust, availed herself of the said foregoing provision and amended said trust as to the division of said one-half on the 28 day of May, 1935, by executing an instrument in making amendment thereof, acknowledged on the 28 day of May, 1935:

Now, Therefore, paragraph four of said Declaration of Trust No. 245 as amended on May 28, 1935, is hereby stricken out in its entirety and each and every provision shall become and is hereby null and void, and in lieu thereof and substituted therefor, effective from this day and date, shall be the following:

(Trustee's Exhibit No. 1.)

Paragraph four:

"Following the death of said Edith Huff, one of the Trustors herein named, from that part of the trust estate referred to as "A" under paragraph three then remaining in the hands of the trustee, the trustee shall pay her funeral expenses and expenses of last illness and legal debts, and thereafter there shall first be paid the [102] following sums to the respective persons mentioned below, namely:

"First: To the Christian Church of Santa Ana, California, the sum of twenty-five hundred dollars (\$2500.00).

"Second: To Stella Mitchell, niece of said Trustor, the sum of twenty-five hundred dollars (\$2500.00). Should said Stella Mitchell be not surviving or die before the death of said Edith Huff, then said sum of twenty-five hundred dollars (\$2500.00) shall become a part of the residue of the trust estate and distributed as hereinafter provided in this paragraph number four.

"Third: To Milo Mitchell, grand-nephew, of said Trustor, the sum of twenty-five hundred dollars (\$2500.00). Should said Milo Mitchell be not surviving or die before the death of said Edith Huff, then said sum of twenty-five hundred dollars (\$2500.00) shall become a part of the residue of the trust estate and distributed as hereinafter provided in this paragraph number four.

"Fourth: To Gladys Mitchell, grand-niece of said Trustor, the sum of twenty-five hundred dollars (\$2500.00). Should said Gladys Mitchell be not surviving or die before the death of said Edith Huff, then said sum of twenty-five hundred dollars (\$2500.00) shall become a part of the residue of the trust estate and distributed as hereinafter provided in this paragraph number four.

(Trustee's Exhibit No. 1.)

"Fifth: To Louie Beaty, nephew of said Trustor, the sum of twenty-five hundred dollars (\$2500.00). Should said Louie Beaty be not surviving or die before the death of said Edith Huff, then said sum of twenty-five hundred dollars (\$2500.00) shall become a part of the residue of the trust estate and distributed as hereinafter provided in this paragraph number four.

"Sixth: To Eileen Beaty, great-niece of said Trustor, the sum of five hundred dollars (\$500.00). Should said Eileen Beaty be not surviving or die before the death of Edith Huff, then said sum of five hundred dollars (\$500.00) shall be paid to Louie Beaty, the father of said Eileen Beaty. If, however, neither said Eileen [103] Beaty nor said Louie Beaty be surviving at the death of said Edith Huff, then said sum of five hundred dollars (\$500.00) shall become a part of the residue of the trust estate and distributed as hereinafter provided in this paragraph number four.

"Seventh: To Margaret Joanna Donahue, great-great-niece of the said Trustor, Edith Huff, and a daughter of Margaret Whitted Donahue, deceased, the sum of fifteen thousand dollars (\$15,000.00) provided the said Margaret Joanna Donahue has attained the age of twenty-seven years. If, however, said Margaret Joanna Donahue has not attained the age of twenty-seven years at the time of the death of the said Trustor, Edith Huff, but has attained the age of twenty-one years, then one-half of the said fifteen thousand dollars (\$15,000.00) shall be distributed to the said Margaret Joanna Donahue, and one-half shall remain in trust with the said Trustee and the income available therefrom shall be distributed to said Margaret Joanna Donahue until she has attained the age

(Trustee's Exhibit No. 1.)

of twenty-seven years, when the said trust estate created for her benefit as provided herein then remaining in the hands of the Trustee, together with any accumulation of income therefrom, shall be distributed to the said Margaret Joanna Donahue, and should the said Margaret Joanna Donahue not have attained the age of twenty-one years at the time of the death of said Trustor, Edith Huff, then the said fifteen thousand dollars (\$15,000.00) shall be held in trust by said Trustee and the income available for distribution shall be distributed to Bernice Lutz, niece of the Trustor, for the support and education of said Margaret Joanna Donahue, the said Bernice Lutz, insofar as this trust fund is concerned, to be known as the guardian of Margaret Joanna Donahue, and the amount needed for the support and education of the said Margaret Joanna Donahue is to be determined solely by said Bernice Lutz. Any income in excess of the actual amount designated by the said Bernice Lutz for the support and education of said Margaret Joanna Donahue is to become a part of the principal of the said trust fund created hereunder for her benefit. Should the said Margaret [104] Joanna Donahue not survive the said Trustor, Edith Huff, then the said sum of fifteen thousand dollars (\$15,000.00) shall be cancelled as to Margaret Joanna Donahue and is to become a part of the residue of the trust estate and distributed as hereinafter provided in this paragraph number four. Should said Margaret Joanne Donahue survive the Trustor, Edith Huff, but die before the termination of this trust fund created for her benefit, 50% of the amount remaining in trust for her benefit at the time of her death shall be distributed to her father, John J. Donahue, and the balance is to become a part of the residue

(Trustee's Exhibit No. 1.)

of the trust estate and distributed as hereinafter provided in this paragraph number four. Should the said John J. Donahue not be surviving at the death of said Margaret Joanna Donahue, then the 50% of the amount remaining in the trust of the benefit of Margaret Joanna Donahue shall become a part of the residue of the trust estate and distributed as hereinafter provided in this paragraph four.

"After payment of the funeral expenses, expenses of last illness and legal debts of the trustor, Edith Huff, together with the payments of the sums provided in subdivisions "First" to "Seventh", both inclusive, the balance of said one-half of the entire trust estate then remaining in the hands of the trustee shall be distributed, disposed of and handled in the following manner;

"An equal one-third share of said portion of the trust estate then remaining shall be distributed to Bernice Lutz, niece of said trustor, Edith Huff. Should said Bernice Lutz be not surviving at the death of said Edith Huff, but be survived by bodily issue, then said portion of said estate so to be distributed to said Bernice Lutz shall be distributed to said bodily issue per stirpes.

Should said Bernice Lutz not be surviving and not be survived by bodily issue, then said portion of said estate so to be distributed to said [105] Bernice Lutz shall be distributed to Ralph Sentney, brother of said Bernice Lutz, and should said Ralph Sentney be not surviving at said time, then one-fourth of said portion of said estate so to be distributed to Bernice Lutz shall be distributed to William Arthur Lutz, the husband of said Bernice Lutz, and the balance of said portion of said estate shall become a part of the trust estate and be held in trust for the benefit of Rex Whitted, nephew, Ella Whitted,

(Trustee's Exhibit No. 1.)

sister, Jane Whitted, Billy Whitted, Jack Whitted, and Donald Whitted, great-nieces and nephews of said Trustor, for the time and for the purposes hereinafter provided. Should said William Arthur Lutz be not surviving at said time, then said one-fourth of said estate shall become a part of the trust estate and held in trust as hereinafter provided for the benefit of said Rex Whitted, Ella Whitted, Jane Whitted, Billy Whitted, Jack Whitted, and Donald Whitted.

“An equal one-third share of said portion of the trust estate then remaining shall be distributed to Ralph Sentney, nephew of said Edith Huff. Should Ralph Sentney be not surviving at the date of death of said Edith Huff but be survived by bodily issue, then that portion of
to said Rslph Sentney shall be distributed
said estate so to be distributed \wedge to the bodily issue of said Ralph Sentney per stirpes. If, however, said Ralph Sentney be not surviving and not be survived by bodily issue, then said portion of said estate shall be distributed to Bernice Lutz, the sister of said Ralph Sentney, and should said Bernice Lutz be not surviving at said time, and should said Ralph Sentney be not survived by bodily issue, then one-half of said portion of said estate so to be distributed to said Rslph Sentney shall be distributed to the wife of said Ralph Sentney, if he is married, and said wife is living with him and no proceedings for divorce or separate maintenance be pending between them at the time of the death of said Rslph Sentney, and the other one-half of said estate shall become a part of the residue of the trust estate to be held in trust for the benefit of Rex Whitted, nephew, Ella Whitted, sister, Jane Whitted, Jack Whitted, Billy Whitted, and Donald Whitted great-

(Trustee's Exhibit No. 1.)

niece and nephews of said [106] Trustor, for the period of time and for the purposes hereinafter provided. Should said Ralph Sentney be not survived by a wife, or should said wife not be living with him or proceedings for divorce or separate maintenance be pending at the time of his death, then said one-half of said estate to which said wife would otherwise be entitled shall be distributed to Margaret Joanna Donahue, if the said Margaret Joanna Donahue has attained the age of twenty-seven years at the death of said Trustor, Edith Huff. If the said Margaret Joanna Donahue has not attained the age of twenty-seven years, then said one-half of said estate to which said wife would otherwise be entitled shall become a part of the trust estate created for Margaret Joanna Donahue under Subdivision Seven of this paragraph four, and should the said Margaret Joanna Donahue not be surviving then said portion of said trust estate shall become a part of the residue of the trust estate and held in trust for the benefit of said Rex Whitted, Ella Whitted, Jane Whitted, Jack Whitted, Billy Whitted, and Donald Whitted for the period of time and for the purposes hereinafter provided.

“An equal one-third share of said portion of the trust estate to remain in trust during the life of Ella Whitted, sister of said Trustor, and thereafter so long as Rex Whitted, nephew of said Trustor, shall live and until Donald Whitted, great-nephew of said Trustor, attains the age of eighteen (18) years, or if said Donald Whitted should die before attaining such age, then until such a time until said Donald Whitted would have attained the age of eighteen (18) years had he lived, and the income from this portion of said estate so held in trust,

(Trustee's Exhibit No. 1.)

provided said income will permit, shall be divided as follows:

“(a) One hundred dollars (\$100.00) per month of said income shall be paid to Rex Whitted, nephew of said Trustor, for his personal use during his life. Should the said Rex Whitted be not surviving or die before the death of said Edith Huff, then Katherine Whitted, the wife of said Rex Whitted, shall be paid said sum of one hundred dollars (\$100.00) per month during her life. Should the said Katherine Whitted [107] be not surviving or die before the death of said Edith Huff, then the said one hundred dollars (\$100.00) per month shall be divided and paid to the bodily issue of said Rex Whitted living at the date of execution of this declaration of trust, per stirpes, provided they have attained the age of twenty-one years. Any of said bodily issue of said Rex Whitted who have not, at the time of death of said Katherine Whitted, attained the age of twenty-one (21) years, then that part of the income which would have been distributed to them or any of them, should they or any of them have attained the age of twenty-one (21) years, shall be deposited in a savings account for the benefit of said bodily issue, respectively, who have not so attained the age of twenty-one (21) years, and the income so accumulated thereon shall be distributed to said bodily issue at such time as said bodily issue attain the age of twenty-one (21) years, respectively. Should any of said bodily issue of said Rex Whitted die during the time said bodily issue shall be entitled to receive his or their share of said one hundred dollars (\$100.00) per month, then the interest to which said bodily issue so deceased would be entitled shall be paid to and be divided equally among the survivor

(Trustee's Exhibit No. 1.)

or survivors of said bodily issue of said Rex Whitted, who may be living upon the execution of this declaration of trust. Upon the death of said Rex Whitted and the said Katherine Whitted, his said wife, and upon the death of all of the bodily issue of said Rex Whitted living at the date of the execution of this declaration of trust, then this trust, in so far as it relates to one-third share of said one-half portion of said estate so held in trust, shall ipso facto terminate and the said estate with accumulated income thereon shall be distributed to the persons who may be the then surviving heirs at law of said trustor, Edith Huff, according to the laws of succession of the State of California then in effect, such persons to be ascertained as of the date of the termination of this trust effecting said one-third portion of said one-half of the trust estate so held in trust. [108]

“(b) The sum of one hundred fifty dollars (\$150.00) of said income shall be paid to Ella Whitted so long as said Ella Whitted shall live, said sum to be paid monthly. Should said Ella Whitted be not surviving or die before the death of said Edith Huff or at any time after the death of said Edith Huff, at which time she would be entitled to receive said sum of one hundred fifty dollars (\$150.00) per month, the said sum shall be divided and paid one-third to Rex Whitted, the son of said Ella Whitted, and two-thirds thereof divided among and paid to Jane Whitted, Billy Whitted, Jack Whitted and Donald Whitted, grandchildren of said Ella Whitted and the bodily issue of Rex Whitted; provided, however, if, at such time, any of said bodily issue shall not have attained the age of twenty-one (21) years, the said income payable to

(Trustee's Exhibit No. 1.)

those of them who have not so attained such age shall be deposited in a savings account to be paid to said bodily issue as and when they reach the age of twenty-one (21) years, respectively. Upon the death of any of said bodily issue of said Rex Whitted at any time they are entitled to receive said share of said sum of one hundred fifty dollars (\$150.00) per month by reason of the death of said Ella Whitted, the interest or amount to which such bodily issue so deceased would be entitled to take, had such bodily issue lived, shall be divided equally among and paid to the survivor or survivors of said bodily issue, and the interest or amount any of said bodily issue who has not attained the age of twenty-one (21) years shall be deposited in said savings account to be distributed at the time said bodily issue shall attain said age of twenty-one (21) years, respectively.

“(c) The balance of the income of said estate then remaining in the hands of said trustee after the payment of said sums of one hundred dollars (\$100.00) and one hundred fifty dollars (\$150.00) monthly, as just above provided, shall be paid to and divided equally among the bodily issue of Rex Whitted, namely: Jane Whitted, Billy Whitted, Jack Whitted and Donald Whitted. Should any of said bodily issue be not surviving or die before the death of said Edith Huff, but be survived [109] by bodily issue then the amount provided to be paid to or accumulated for such bodily issue of said Rex Whitted shall be disbursed to the bodily issue of such deceased bodily issue of said Rex Whitted per stirpes. If, however, any one or more of said bodily issue of said Rex Whitted be not surviving or die before the death of said Edith Huff and not be survived by bodily issue of said deceased bodily

(Trustee's Exhibit No. 1.)

issue of said Rex Whitted, then the interest or amount to be paid to any of the bodily issue of said Rex Whitted so deceased, shall be divided equally amongst and be paid to the survivor or survivors of said bodily issue of said Rex Whitted, and upon the death of all of said bodily issue of said Rex Whitted this trust, in so far as it relates to said one-third share of said one-half part thereof, shall terminate forthwith and the trust estate then remaining in the hands of said trustee shall be distributed and such distribution shall be made in the following manner: The bodily issue of any of the deceased bodily issue of said Rex Whitted shall receive the estate and interest which said deceased bodily issue of said Rex Whitted would be entitled to receive had he or she lived, per stirpes; and the balance then remaining shall be distributed to the persons who may be the then surviving heirs at law of said Edith Huff according to the law of succession of the State of California then in effect, such person to be ascertained at the date of the termination of this portion of said trust.

"Should any of said bodily issue of said Rex Whitted not attain the age of twenty-one (21) years at the date of the death of said Edith Huff or at the time any of them are entitled to receive said sums above provided to be so divided among them, then the same shall be deposited in a savings account to be disbursed to said bodily issue when they attain the age of twenty-one (21) years, respectively, except that as hereinafter provided certain sums may be used for maintenance and education until said bodily issue attain said age of twenty-one (21) years.

"From the said above income to be paid into said savings account, as above provided, for said Donald Whitted, during the time and until said [110] Donald Whitted shall attain the age of twenty-one (21) years, there shall be

(Trustee's Exhibit No. 1.)

set aside the sum of fifty dollars (\$50.00) per month, which said sum shall be distributed and accumulated by said trustee in the following manner: Ten dollars (\$10.00) per month thereof shall be used by said trustee toward the support and education of said Donald Whitted until he attains the age of eight (8) years; fifteen dollars (\$15.00) per month of said sum shall be used by said trustee toward the support and education of said Donald Whitted from the time he attains the age of eight (8) years until he attains the age of twelve (12) years; twenty-five dollars (\$25.00) per month of said sum shall be used by said trustee toward the maintenance and education of said Donald Whitted from the time he attains the age of twelve (12) years until he attains the age of sixteen (16) years; fifty dollars (\$50.00) per month shall be used by the said trustee toward the maintenance and education of said Donald Whitted from the time he attains the age of sixteen (16) years until he attains the age of twenty-one (21) years, provided he attends a high school, college or university. If he does not attend a high school, college or university, said sum of fifty dollars (\$50.00) per month shall be held, and the interest accumulated thereon, in said savings account to be distributed and paid to said Donald Whitted when he attains the age of twenty-one (21) years. The balance of said fifty dollars (\$50.00), as hereinbefore provided, shall be held and maintained in said savings account and the income accumulated thereon until said Donald Whitted attains the age of sixteen (16) years when said sums accumulated in said savings account, including the earnings thereon, shall be used toward the maintenance and education of said Donald Whitted, provided he attends a high

(Trustee's Exhibit No. 1.)

school, college or university, said sums are to be accumulated and paid to him when he attains the age of twenty-one (21) years.

"From said income provided above to be deposited in said savings account to the credit and for the benefit of Jane Whitted, greatniece of said trustor, Edith Huff, there shall be set aside the sum of fifty [111] dollars (\$50.00) per month, to be distributed and accumulated by the said trustee in the following manner: Twenty-five dollars (\$25.00) per month thereof to be used by the said trustee toward the maintenance and education of Jane Whitted until said Jane Whitted has attained the age of sixteen (16) years; fifty dollars (\$50.00) per month shall be used by the trustee toward the maintenance and education of said Jane Whitted from the time she attains the age of sixteen (16) years until she attains the age of twenty-one (21) years, provided she attends a high school, college or university. If she does not attend a high school college or university, said sum of fifty dollars (\$50.00) per month shall be held and maintained in said savings account to be paid to said Jane Whitted, with the interest accumulated thereon, when she has attained the age of twenty-one (21) years. The balance of said sum of fifty dollars (\$50.00), as hereinbefore provided, shall be held in said savings account and the income accumulated thereon until said Jane Whitted attains the age of sixteen (16) years when the sums so accumulated in said savings account, including the earnings thereon, shall be used toward the maintenance and education of said Jane Whitted provided she attends a high school, college or university. If she does not attend a high school, college or university, said sums are to be accumulated and paid

(Trustee's Exhibit No. 1.)

to her, with the income accumulated thereon, when she attains said age of twenty-one (21) years.

"From the said above income hereinbefore provided to be held in said savings account to the credit and for the benefit of Billy Whitted, great-nephew of said Trustor, Edith Huff, until said Billy Whitted attains the age of twenty-one (21) years, there shall be set aside the sum of fifty dollars (\$50.00) per month, to be distributed to and accumulated for said Billy Whitted in the following manner; Twenty-five dollars (\$25.00) per month thereof to be used by said trustee toward the maintenance and education of said Billy Whitted until he has attained the age of sixteen (16) years; fifty dollars (\$50.00) per month of said sum to be used by the trustee toward [112] the maintenance and education of said Billy Whitted from the time he attains the age of sixteen (16) years until he attains the age of twenty-one (21) years, provided he attends a high school, college or university. If he does not attend a high school, college or university, said sum of fifty dollars (\$50.00) per month shall be held and maintained in said savings account, to be paid to said Billy Whitted, together with the income accumulated thereon when he has attained the age of twenty-one (21) years. The balance of said fifty dollars (\$50.00) per month, as hereinbefore provided, shall be accumulated in said savings account, together with the income earned thereon, for the benefit of said Billy Whitted until he attains the age of sixteen (16) years when the sums so accumulated in said savings account, including the earnings thereon, shall be used toward the maintenance and education of said Billy Whitted, provided he attends a high school, college or university. If he does not attend

(Trustee's Exhibit No. 1.)

a high school, college or university, said sums shall be held in said savings account, to be paid to said Billy Whitted, together with income accumulated thereon, when he attains the age of twenty-one (21) years."

It is a condition as to the distribution of the part of the trust estate distributed under this paragraph four, controlling all other provisions thereof and anything to the contrary therein notwithstanding, that the trusts as provided under this said paragraph four shall terminate and end immediately upon the death of said Edith Huff and all the specifically named Beneficiaries under said paragraph four who shall be alive at the date of the execution of said trust, and at said time the Trustee shall distribute all the principal or corpus of that part of the trust estate as provided for distribution under this paragraph four in its hands to the persons entitled thereto as provided therein.

In Witness Whereof, The First National Bank of Santa Ana, in its capacity as Trustee, has caused this instrument to be executed by its proper officer thereunto duly authorized, under its corporate seal, this 3rd day of August, 1935. [113]

THE FIRST NATIONAL BANK OF SANTA ANA,
By C. L. PRITCHARD

Trust Officer-Trustee.

I, the undersigned, surviving Trustor, named in said Declaration of Trust No. 245, do hereby approve, ratify and confirm this amendment to said Declaration of Trust No. 245, and I do hereby agree to be bound by all the terms thereof,

Dated this 3rd day of August, 1935.

EDITH HUFF

Trustor. [114]

(Trustee's Exhibit No. 1.)

State of California

County of Orange—ss.

On this 3rd day of August, 1935, before me, the undersigned, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared C. L. Pritchard, known to me to be the Trust Officer of the corporation described in and that executed the within instrument, and *know* to me to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

Witness my hand and official seal.

(Seal)

N. OPAL DAVIS,

Notary Public in and for said County and
State.

State of California

County of Orange—ss.

On this 3rd day of August, 1935, before me, the undersigned, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Edith Huff, known to me to be the person described in and whose name is subscribed to the within instrument, and she acknowledged to me that she executed the same.

Witness my hand and official seal.

(Seal)

H. OPAL DAVIS,

Notary Public in and for said County and
State.

Trustee's Exhibit No. 1

[Endorsed]: Filed Oct. 13, 1943, Hubert F. Laugharn,
Referee.

[Endorsed]: Filed Feb. 4, 1944 [115]

[EXHIBIT NO. 2.]

SPENDTHRIFT TRUSTS:

Inasmuch as a gift takes nothing from the prior or subsequent creditors of a beneficiary to which they previously had the right to look for payment, they cannot complain that the donor has provided that the property or income shall go or be paid to the beneficiary and shall not be subject to the claims of creditors.

McColgan vs. Magee, Inc., 172 Cal. 182.

REST. TRUSTS. SEC. 152, PAGE 374.

Under the provision of the National Bankruptcy Act, the interest of a beneficiary, if it cannot be transferred by him and cannot be reached by his creditors, does not pass to his trustee in bankruptcy.

REST. TRUSTS, SEC. 147-D, Page 362.

By the provisions of the National Bankruptcy Act the trustee in bankruptcy is vested with the title of the bankrupt to property which prior to the filing of the petition the bankrupt could by any means have transferred or which might have been levied upon and sold under a judicial process against him, and the trustee in bankruptcy is vested with the powers of a judgment creditor having an unsatisfied execution. (Ref. Nat'l Bankruptcy Act, Sec. 70-A and 47-A.)

The situations in which the interest of the beneficiary of a trust cannot be voluntarily transferred by him or in which creditors cannot subject it to the satisfaction of their claims are stated in Sec. 149-162 of Restatement on Trusts.

See 64 Pac. 2nd. 1013

(Trustee's Exhibit No. 2.)

A beneficiary of a trust to sell the corpus and pay the proceeds to him has no transferable interest in the corpus.

Craven vs Dominguez Est. Co. (1925) 72 Cal App. 713 (237 Pac. 821)

Where a trust is created for the benefit of another, the beneficiary may be restrained by appropriate provisions of the trust instrument from disposing of his interests or ownership.

172 Cal. 182 (121 Cal 438.) [116]

Where a trust confers upon the trustee an authority to choose or change the beneficiary, or gives him a discretion which he is not obliged to exercise in favor of the bankrupt, the latter's expectation of benefits by the trust is not an interest which will pass to his trustee in bankruptcy.

Nichols vs Eaton, 91 U. S. 716.

Trustee in Bankruptcy takes no higher or greater estate than the bankrupt himself possessed when the Trustee was appointed; and hence where conditions upon which the bankrupt was to become entitled to a trust fund were not performed until after his adjudication, and after his debts had been extinguished by his discharge, his Trustee had no title thereto for the use of creditors.

Hull v. Palmer, 140 N. Y. S. 811

An expectancy in the estate of a living person does not pass to the Trustee in Bankruptcy. The interest of a bankrupt in a joint reciprocal Will which makes provision for the devising of the property to him after the death of the survivor does not pass to the trustee in

(Trustee's Exhibit No. 2.)

bankruptcy if the survivor takes the property absolutely or has the power of disposition otherwise, but it does pass to the trustee if the survivor has a mere life estate in the property with remainder to the bankrupt.

8 C. J. S. 632

Where the bankrupt's aged mother executed a Will September 14, 1917, leaving him practically her entire estate and he filed a petition in bankruptcy before her death October 7th, his contingent interest under the Will was not an asset of his estate, for the mother might at any time have changed her Will.

In Re Seal (DCNY) 261 Fed. 112.

Levy

Execution on interest of Beneficiary (Not subject to sale)

Anglo-Cal-Nat Bank vs Kidd 137 Pac 2nd 460

Title is in Trustees of Trust Not in Beneficiaries [117]
§863 Civil Code Calif so expressly provides re an Express Trust also see §864.

See: 7 Cal. App 248 (94 P. 252)

76 Cal. App 655 (245 P. 803)

181 Cal. 604, 606 (188 P. 985)

REST. TRUSTS—SEC. 168-F, Page 644

When under the local law a remainder subject to a condition precedent or other future interest is transferable only by release or by a deed creating an estoppel, or by a transaction enforced in equity, such interest is not a future interest, "which prior to the filing of the petition the bankrupt could by any means have transferred," and is not a future interest which passes to the Trustee in Bankruptcy.

(Trustee's Exhibit No. 2.)

Where the beneficiary has no present right of enjoyment or *power* of alienation, his interest cannot be reached by his creditors.

65 C. J. 554

Where one for whom property is held in trust becomes a bankrupt, his entire interest in the trust estate passes to the Trustee in Bankruptcy dependent on whether the bankrupt's beneficial interest is transferrable or subject to judicial sale, this being determined by the law of the state where the trust was created and the property is situated. Where, by the terms of the trust, the right of creditors to the trust estate are cut off in jurisdictions where such limitations are upheld, the trust estate does not pass to the Trustee in Bankruptcy.

8 C. J. S. 631

Similarly, where property held in trust for a bankrupt is not subject to the claims of his creditors prior to his discharge in bankruptcy, a subsequent conveyance of the property to him will not render it subject to debts antedating his discharge, although the Trustee purposely delays the conveyance.

8 C. J. S. 663

The fact that a voluntary bankrupt, who had practically [118] no assets, filed his petition to protect from his creditors a legacy he expected to receive shortly from his mother, does not warrant a setting aside of his adjudication as a bankrupt, since the purpose of Bankruptcy Act was to protect after-acquired property from creditors, and the fact that he had some special property in view does not change his rights.

Bank of Eberton vs. Swift, 268 Fed. 305 Cited
in 8 C. J. S. 482

(Trustee's Exhibit No. 2.)

In order to invoke the extraordinary powers of a court of equity to vacate or ignore an order of adjudication of bankruptcy because procured by extrinsic fraud, the party making the attack must show injury by reason of the order.

8 C. J. S. 485

Creditor cannot question validity of trust.

8 C. J. S.—Bankruptcy Section 179—1943 Cumulative Pocket

§866—Interest remains in grantor of Trust.

Restraints—valid—§867—Civil Code Calif.

The crime of conspiracy to conceal assets cannot be committed unless the assets to be concealed are such as the Trustee in Bankruptcy is entitled to receive.

Rem. on Bankruptcy, Sec. 3000, Page 21 5th Edition

Mere expectancies do not pass.

Rem. on Bankruptcy, Sec. 1219.05 4th Edition

The right of a beneficiary named in a policy on the life of another with right to change beneficiaries reserved is a mere expectancy. No interest passes upon the bankruptcy of the beneficiary during the lifetime of the assured.

I. D.

See: Restatement—Future Interest.

2 A. L. R. 858

Citing: In Beck's Estate, 133 Pa. 51.

Bequest upon condition that it be not liable to be attached for debts of legatee, but paid directly to legatee. [119]

(Trustee's Exhibit No. 2.)

Held: Effective to protect the fund in transit from the executor to the legatee.

(Even though no strings attached after payment to legatee)

In Hartman's Estate, 31 Pa. Super. Ct. 152 Same facts held to invalidate an assignment of legatee's interest in estate.

REST. PROP. FUTURE INTERESTS—Sec. 168 (P. 637)

When in the course of the bankruptcy proceedings the bankrupt has failed to reveal his ownership of a future interest, to which his trustee is entitled, such concealment, followed by the subsequent discovery of such ownership, provides the same basis for denying the bankrupt his discharge, as his failure to reveal his ownership of any other asset.

Page 639.

The presence of a restraint on the alienation of a future interest does not prevent the acquisition of such interest by the Trustee. Unless the terms of the restraint would be violated thereby.

Page 639

The rules defining permissible restraints or alienation and permissible provisions as to conditions precedent and as to defeasance or alienation, make it possible for the creators of future interests that it cannot pass to or be reached by the Trustee in Bankruptcy.

[Endorsed]: Trustee's Exhibit No. 2 Filed Oct 13 1943 Hubert F. Laugharn Referee

[Endorsed]: Filed Feb. 4, 1944.

In the United States Circuit Court of Appeals
for the Ninth Circuit.

Number 10792

In the Matter of

CHARLES RALPH SENTNEY,

Bankrupt.

ADOPTION OF POINTS FILED IN TRIAL
COURT.

Now comes the Appellant in the above entitled matter and hereby adopts the Statement of Points upon which he will rely on appeal, which was filed by him with the Clerk of the Trial Court.

Appellant further states that he desires to have the entire record printed as the same was certified by the Trial Court.

Dated this 9th day of June, 1944.

EARL E. MOSS and LOUIS LOMBARDI

By Louis Lombardi

Attorneys for Appellants.

[Endorsed]: Filed Jun. 12, 1944. Paul P. O'Brien, clerk.

[Endorsed]: No. 10792. United States Circuit Court of Appeals for the Ninth Circuit. Harry Ashton, as Trustee in Bankruptcy of the Estate of Charles Ralph Sentney, Appellant, vs. Charles Ralph Sentney, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed June 9, 1944.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for
the Ninth Circuit.

